

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF WEST VIRGINIA  
 3 AT CLARKSBURG  
 4 - - -

5 CHRISTY J. RHOADES, in her CIVIL ACTION NO. 1:18-CV-186  
 6 capacity as the Administratrix  
 7 and Personal Representative of  
 8 the estate of Philip Jontz  
 9 Rhoades,

10 Plaintiff,

11 V.

12 DAVID FORSYTH, in his official  
 13 and individual capacity,

14 Defendant.

15 - - -  
 16 Proceedings had in the Jury Trial, of the above-styled  
 17 action on Wednesday, April 7, 2021, before the Honorable Judge  
 18 Thomas S. Klee, District Judge, at Clarksburg, West Virginia.  
 19 - - -

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1 (Proceedings commenced at 9:08 a.m.)

09:08:31 2 THE COURT: All right. Good morning everyone. We  
09:08:54 3 are here on day two of trial in the matter of Rhoades versus  
09:08:59 4 Forsyth, 18-CV-186. We are here initially this morning for  
09:09:06 5 the jury to be here at 10:00. We're here presently to address  
09:09:10 6 the issue yesterday where we didn't seem to have any  
09:09:13 7 witnesses. So is Sergeant Branham here this morning?

09:09:18 8 MR. UMINA: He is in the hall, Your Honor.

09:09:19 9 THE COURT: All right. Is Mr. Crum available?

09:09:21 10 MR. UMINA: Yes, Your Honor. I have the phone number  
09:09:23 11 for him as well.

09:09:24 12 THE COURT: All right. Seems to me that -- well, let  
09:09:29 13 me ask, are there any preliminary matters we need to take up?

09:09:32 14 MR. UMINA: Not prior to these, Your Honor.

09:09:35 15 THE COURT: Ms. Durst?

09:09:36 16 MS. DURST: No, I don't believe so, Your Honor.

09:09:39 17 THE COURT: Mr. Umina, if I could trouble you for  
09:09:39 18 that number so Madam Clerk can call Mr. Crum.

09:09:42 19 MR. UMINA: Yes, Your Honor. 304-534-9633.

09:10:04 20 (Calling Nathan Crum via telephone call.)

09:10:17 21 THE COURT: Mr. Crum, can you hear me, sir?

09:10:21 22 THE WITNESS: Yes, sir, I can.

09:10:22 23 THE COURT: All right. This is Judge Klee down in  
09:10:23 24 Clarksburg. I will give you fair warning, you are on our  
09:10:26 25 version of speakerphone here in court this morning. Do you

09:10:29 1 have a few moments, sir?

09:10:31 2 THE WITNESS: I do. Absolutely, sir.

09:10:33 3 THE COURT: Outstanding. I'm going to ask you -- I  
09:10:36 4 know we have you just by telephone -- but I'm going to ask you  
09:10:38 5 to raise your right hand so Madam Clerk can swear you in,  
09:10:42 6 please.

09:10:43 7 THE WITNESS: Okay.

09:10:44 8 THE CLERK: Can you please state your full name for  
09:10:46 9 the record.

09:10:47 10 THE WITNESS: Nathan Edward Crum.

09:10:49 11 THE CLERK: Thank you.

09:10:54 12 NATHAN EDWARD CRUM, WITNESS, SWORN

09:10:56 13 THE COURT: All right. Thank you, Mr. Crum. And I  
09:11:00 14 know you did this for Madam Clerk, can I ask you to just state  
09:11:03 15 your full name for the record, sir?

09:11:05 16 THE WITNESS: Sure. Nathan Edward Crum.

09:11:08 17 THE COURT: Sir, what do you do for a living, Mr.  
09:11:11 18 Crum?

09:11:11 19 THE WITNESS: I own and also perform process service  
09:11:15 20 as well as investigation (inaudible) and Blue Eagle  
09:11:21 21 Investigation.

09:11:21 22 COURT REPORTER: I'm sorry, I didn't hear you.

09:11:21 23 THE COURT: All right. Mr. Crum, one thing, if I  
09:11:24 24 could ask you to speak just a little slower for us so Madam  
09:11:28 25 Court Reporter can have the benefit of being able to clearly

09:11:34 1 understand you.

09:11:34 2 Again, can you tell me the nature of your work, sir.

09:11:37 3 THE WITNESS: Sure. I own two companies, one is  
09:11:42 4 called Docuserve, D-O-C-U-S-E-R-V-E, and the other one is  
09:11:49 5 called Blue Eagle Investigation, and it's a private  
09:11:54 6 investigation company. So the nature of our work is obviously  
09:11:58 7 private investigation and process service.

09:12:01 8 THE COURT: Okay. And how long -- I really just have  
09:12:05 9 a few questions with respect to your work as a process server,  
09:12:08 10 sir.

09:12:09 11 How long you have worked in that field?

09:12:10 12 THE WITNESS: In process service, we have been doing  
09:12:14 13 it for over 13 years; and private investigations, this is year  
09:12:18 14 number six.

09:12:18 15 THE COURT: And we are here this morning, we're  
09:12:25 16 midstream in a trial in the matter of Christy Rhoades versus  
09:12:30 17 David Forsyth.

09:12:31 18 It's my understanding, sir, based on some affidavits of  
09:12:36 19 service that were filed in this case, that you may have been  
09:12:39 20 retained by plaintiff's counsel, in particular Mr. Umina, to  
09:12:43 21 serve some subpoenas in this case; is that correct?

09:12:47 22 THE WITNESS: Yes, sir. That is correct.

09:12:49 23 THE COURT: All right. And there are two subpoenas  
09:12:51 24 in particular. Again, sir, I've got the returns and  
09:12:55 25 affidavits. So honestly, imposing on your time this morning

09:12:59 1 might be a little bit of overkill, but I wanted to make sure  
09:13:02 2 that I understood the lay of the land before we deal with some  
09:13:06 3 other issues today.

09:13:07 4 There is an affidavit of service that was signed by you  
09:13:13 5 on April 5, 2021, related to the service of a trial subpoena  
09:13:19 6 upon a Sergeant JP Branham with the West Virginia State  
09:13:24 7 Police. Do you recall your firm's efforts to serve that  
09:13:27 8 subpoena?

09:13:28 9 THE WITNESS: I do, yes, sir.

09:13:30 10 THE COURT: Could you walk me through that, please?

09:13:33 11 THE WITNESS: Yes, sir. So one of our first attempts  
09:13:37 12 was on March 16. We had gone to the residence and the office  
09:13:41 13 was closed. There was -- the lady that was in the office  
09:13:46 14 asked us to return the following day and there would be  
09:13:50 15 someone there. The officer that we were looking for would be  
09:13:53 16 there after four. So we left. And that was performed by  
09:13:57 17 Andrew Hess, who was one of the employees at the time, an  
09:14:01 18 employee here.

09:14:01 19 The following day, on the 17th, around 3:30, I believe --  
09:14:06 20 I apologize I am pulling this from my memory -- we went back  
09:14:09 21 and the woman at the front desk refused to accept papers for  
09:14:16 22 that officer; said that she wouldn't accept papers for him  
09:14:21 23 specifically.

09:14:22 24 So we went back, we spoke with the attorney's office and  
09:14:28 25 we explained to them what was said and they provided a

different affidavit that -- or excuse me, a different summons that said the state police department, care of that particular officer, Sergeant JP Branham.

So we went back again on the 23rd which was -- I believe the 17th was near a weekend, so we went back the following week. And the process server, again, Andrew Hess, this is his third attempt there, third time going, he said that when he went to the office, that the lady behind the counter brought in three or four other officers and informed him that he had this -- that this document had to be submitted to the office in Charleston, that they would not accept this document to that office.

So he -- after he left, he called me on the phone, and him and I spoke. And he said, you know, like, he was very intimidated by it because there was several, you know, badged armed officers and --

COURT REPORTER: I'm sorry.

THE WITNESS: -- (indiscernible) that they were not going to accept it. So I called, I made a phone call to that office --

THE COURT: Mr. Crum, if I could interrupt you for a second. Again, if you wouldn't mind speaking a little bit more slowly for us. I believe you were recounting the events between or among the third or fourth attempts to serve the subpoena.

09:15:57 1 THE WITNESS: Yes. So I am not sure where we missed.  
09:16:01 2 I apologize, I will try to speak slower, sir.

09:16:01 3 THE COURT: Thank you.

09:16:04 4 THE WITNESS: On the 23rd, we made another attempt  
09:16:10 5 and the process server, Andrew Hess, who went to the state  
09:16:15 6 police department, was met by a lady at the front desk and  
09:16:21 7 several officers who were there. They refused to accept the  
09:16:25 8 documents, stating that the documents had to be sent to their  
09:16:30 9 office that was located in Charleston, West Virginia, for  
09:16:35 10 acceptance of that -- of those documents.

09:16:38 11 So the process server left the office and called me on  
09:16:43 12 the phone, and explained to me what had happened at his  
09:16:50 13 attempt. I informed him that I would call and I did. So I  
09:16:54 14 called the office, probably within 20 minutes of him leaving  
09:16:58 15 on the 23rd, and I spoke with the lady at the front desk.

09:17:01 16 THE COURT: And Mr. Crum, again, I apologize for  
09:17:05 17 interrupting, but when you say you called the office, I assume  
09:17:07 18 you called the state police detachment, the office of the  
09:17:11 19 state police; is that correct?

09:17:12 20 THE WITNESS: That is correct. I called the office  
09:17:14 21 that the process server had just left. Yes, sir, that is  
09:17:16 22 accurate.

09:17:17 23 THE COURT: All right. Understood. Thank you.

09:17:18 24 THE WITNESS: So I spoke with the lady that Mr. Hess  
09:17:22 25 spoke with, and she began to inform me that their policy was



09:17:26 1 that they do not accept documents at that office. They do not  
09:17:31 2 accept subpoenas or summons at that office. And I informed  
09:17:36 3 her that the documents being served to you were addressed to  
09:17:40 4 that address, they were addressed to the state police  
09:17:43 5 department. As a process server that is where we are required  
09:17:47 6 to do that. If you -- we are required to provide the  
09:17:51 7 documents. If you have a company policy, that does not  
09:17:54 8 supercede the letter of the law when we are here, supposed to  
09:17:59 9 provide documents, and that I would be returning the following  
09:18:03 10 day with the documents that I was going to leave there whether  
09:18:10 11 they accepted them or not, and if they chose to not agree to  
09:18:13 12 take them, that I would put that in my affidavit that you were  
09:18:17 13 refusing the documents and I left them. And she said that's  
09:18:21 14 fine and hung the phone up on me. She didn't say anything  
09:18:21 15 other than that, just hung up.

09:18:24 16 So I was anticipating the following day when I went there  
09:18:28 17 to be in confrontation. I was expecting that. So on the  
09:18:33 18 24th, I went there with another process server other than  
09:18:36 19 myself; Andrew and I went there. I walked into the room. I  
09:18:42 20 said, this is who I am, and she said, that's fine, leave them  
09:18:46 21 there. And I laid the documents down and walked out. There  
09:18:49 22 was no confrontation, nothing. They took the documents and we  
09:18:52 23 left.

09:18:55 24 THE COURT: Okay. Do you know the identity of the  
09:18:58 25 individual at the front desk with whom you spoke on that day?

09:19:02 1 THE WITNESS: I don't know her name, but it was a  
09:19:08 2 Caucasian female. I would say around the age of 45.

09:19:12 3 THE COURT: And do you know if the person you spoke  
09:19:15 4 to on the telephone was the same person with whom you left the  
09:19:17 5 subpoena in this case?

09:19:18 6 THE WITNESS: No, Your Honor, I do not. I would  
09:19:24 7 assume, but I don't know that. I don't know the identity of  
09:19:27 8 that person. And the original process server that had gone,  
09:19:31 9 did not go to the attempt that was on the 24th.

09:19:35 10 THE COURT: Do you know on March 24th, when you left  
09:19:40 11 the subpoena with the front desk at the state police  
09:19:45 12 detachment, if Sergeant Branham was present in that  
09:19:50 13 detachment?

09:19:50 14 THE WITNESS: No, Your Honor, I wouldn't be able to  
09:19:52 15 identify him even at this day. I've not met him.

09:19:56 16 THE COURT: But there was not any indication to you  
09:19:59 17 from anyone you spoke on the phone or anyone you interacted  
09:20:03 18 with physically, was physically present at the detachment, as  
09:20:07 19 to whether or not he was present that day?

09:20:09 20 THE WITNESS: That is correct, Your Honor. No one  
09:20:12 21 informed me of that in any way, no.

09:20:14 22 THE COURT: Did you have any other interaction,  
09:20:17 23 Mr. Crum, with anyone affiliated with either Sergeant Branham  
09:20:20 24 or the West Virginia State Police with respect to the subpoena  
09:20:24 25 that was issued to Sergeant Branham for appearance at this

09:20:28 1 trial?

09:20:28 2 THE WITNESS: No, Your Honor. I have no relationship  
09:20:31 3 with any of the individuals.

09:20:33 4 THE COURT: But you weren't asked to do any follow-up  
09:20:36 5 work or anything like that by counsel or otherwise?

09:20:39 6 THE WITNESS: No, Your Honor. I was not.

09:20:41 7 THE COURT: And then you completed the affidavit of  
09:20:42 8 service, again, it appears to be signed by you on April 5th,  
09:20:49 9 2021, it's notarized by a Kambria Romanko, and I apologize if  
09:20:53 10 I am mispronouncing her name, on the same day; is that  
09:20:56 11 correct?

09:20:57 12 THE WITNESS: Yes. I want to kind of put a little  
09:21:01 13 asterisk beside that, sir. We have to complete the affidavit  
09:21:03 14 the day after, it just hadn't made it to that attorney's  
09:21:06 15 office in the mail, so we actually went over and recreated the  
09:21:10 16 affidavit. So the one that you're seeing is the one that we  
09:21:12 17 had gone and recreated, but we originally created it the day  
09:21:16 18 right after that.

09:21:17 19 THE COURT: Okay. Madam Court Reporter, I apologize,  
09:21:20 20 it's K-A-M-B-R-I-A, R-O-M-A-N-K-O.

09:21:20 21 COURT REPORTER: Thank you.

09:21:32 22 THE COURT: And then I assume, Mr. Crum, that once  
09:21:35 23 you signed that affidavit on the 5th of April, that basically  
09:21:41 24 until your phone was darkened at my request yesterday, had no  
09:21:46 25 further involvement or interaction with respect to the

09:21:49 1 subpoena to Sergeant Branham; is that correct?

09:21:52 2 THE WITNESS: That's correct, sir, yes.

09:21:54 3 THE COURT: Were you also retained to serve a  
09:21:56 4 subpoena on a Dr. Savasman?

09:22:00 5 THE WITNESS: Yes, Your Honor.

09:22:01 6 THE COURT: Okay. Can you tell me about your firm's  
09:22:07 7 efforts to serve that subpoena?

09:22:08 8 THE WITNESS: I will attempt, sir. If you could give  
09:22:12 9 me just one moment, I would like to bring it up on my iPad  
09:22:16 10 here, so I can speak intelligently to it.

09:22:17 11 THE COURT: Please, I'm doing the same.

09:22:31 12 THE WITNESS: You're referencing Dr. Savasman; is  
09:22:36 13 that correct?

09:22:37 14 THE COURT: That is correct.

09:22:38 15 THE WITNESS: Okay. Yes, sir.

09:22:39 16 THE COURT: All right. Can you tell me about your  
09:22:41 17 firm's efforts to serve that trial subpoena upon Dr. Metin  
09:22:51 18 Savasman.

09:22:52 19 THE WITNESS: Yes, sir. That was on March 15th at  
09:22:55 20 11:35 a.m. It was in Charleston, West Virginia. I was in  
09:23:01 21 that location. That was myself who performed that service of  
09:23:05 22 process. I went down to Charleston for a different meeting at  
09:23:12 23 the State Capitol Building; and after that meeting, I had gone  
09:23:16 24 over to the office; and I don't know how to explain it but I  
09:23:21 25 guess the office is kind of connected to -- I don't know if

09:23:28 1 it's like a public health building-type situation.

09:23:31 2 When I walked into the door, they asked me to -- they  
09:23:35 3 took my temperature. I walked into the room. The officer  
09:23:38 4 behind the door said, let me go get the person that will  
09:23:41 5 actually accept the document, so he called her on the phone  
09:23:44 6 while I sat down and I believe her name was Millicent Moran, I  
09:23:55 7 apologize if I am chopping that up, excuse me.

09:23:58 8 So she came out, she was a female about 5'7", brown hair,  
09:24:03 9 Caucasian, around the age of 40. She came out. She very  
09:24:06 10 happily accepted it, and I went back about my business.

09:24:11 11 THE COURT: Do you know who Ms. Moran is?

09:24:14 12 THE WITNESS: I do not. I do know that in that  
09:24:17 13 particular office, they required me to sign in, and she signed  
09:24:21 14 off that I -- she had accepted papers on that same document.  
09:24:25 15 So they have a log file in their office that shows the time  
09:24:28 16 you are there -- the time I was there, excuse me, the time I  
09:24:32 17 was there, and that she signed off on accepting it.

09:24:35 18 THE COURT: And you were at the state medical  
09:24:38 19 examiner's office; is that correct?

09:24:39 20 THE WITNESS: Yes, sir. That is correct.

09:24:41 21 THE COURT: Okay. And when you first arrived, I'm  
09:24:43 22 sure you were -- other than having your temperature taken,  
09:24:46 23 were met by someone in the reception area. Would that be a  
09:24:51 24 fair assumption?

09:24:52 25 THE WITNESS: Yeah. I would like to -- I am trying

09:24:55 1 to be polite about it, sir. It was kind of like an office  
09:24:58 2 corner/building. It wasn't really a -- it wasn't a place for  
09:25:02 3 public access. It was more of like a place that the medical  
09:25:08 4 examiners would come in and sit in cubes, and it was a really  
09:25:13 5 tight-quartered area. But there was an officer there who did  
09:25:16 6 meet me at the door. He asked me what my business was and I  
09:25:19 7 told him what I was there for. And he said, no problem, I  
09:25:20 8 will get someone to come down for you, have a seat, and then  
09:25:23 9 he brought out a piece of paper -- or a little pad that had a  
09:25:27 10 log-in file that had my name and what company I was with, and  
09:25:31 11 what time I got there, and the reason.

09:25:33 12 And when the lady came out, she signed that document and  
09:25:38 13 took the documents from me and said thank you. They were very  
09:25:42 14 polite and very receptive. No problems.

09:25:45 15 THE COURT: Was it your impression, Mr. Crum, that  
09:25:48 16 Ms. Moran worked in the medical examiner's office?

09:25:53 17 THE WITNESS: Yes. According to that officer, she  
09:25:56 18 was the one that would accept for that office.

09:25:59 19 THE COURT: And were you able to hear the call from  
09:26:04 20 security that summoned Ms. Moran to the lobby area?

09:26:10 21 THE WITNESS: I was, yeah.

09:26:13 22 THE COURT: Can you tell me what -- at least the end  
09:26:16 23 of the conversation that you heard?

09:26:17 24 THE WITNESS: The part of the conversation, sir, that  
09:26:19 25 I heard was basically, I have a process server here that has

documents for the doctor. And she said, no problem, I will be right there, and it was a very brief conversation.

THE COURT: So you were certainly left with the impression, though, that the reason for your presence, the envelope that you had when you handed it to Ms. Moran, there were no secrets, everybody knew why you were there and what your purpose was?

THE WITNESS: Absolutely. I have no reason to believe that they didn't have a hundred percent understanding of why I was there.

THE COURT: Did you have any verbal interaction or conversation with Ms. Moran?

THE WITNESS: Yes, sir. She came out and said hello, and again, didn't seem stressed or upset or put out by it at all, like it was something that was very common for her to receive those types of documents.

THE COURT: But you told her why you were there and what you were handing her, correct?

THE WITNESS: I did. I apologize, sir. I didn't explain this. We put all of our documents in a manila folder that is sealed. And we write on the front of it who this document is for very clearly, so she knew exactly who the document was for because it was written in four-inch sized letters across the entire front of the page. It was very simple to see it.

09:27:46 1 THE COURT: Did Ms. Moran say anything to you or give  
09:27:49 2 you any impression that she did not know Dr. Savasman, who he  
09:27:56 3 was?

09:27:56 4 THE WITNESS: Not at all. They immediately knew who  
09:27:59 5 he was.

09:27:59 6 THE COURT: Were you given any impression by anything  
09:28:01 7 Ms. Moran said or otherwise that Dr. Savasman did not work at  
09:28:06 8 the office in which you were located to serve this trial  
09:28:10 9 subpoena?

09:28:11 10 THE WITNESS: Not at all, not even a little bit.

09:28:13 11 THE COURT: Anything that Ms. Moran said or indicated  
09:28:19 12 that gave you the impression that there was a risk that this  
09:28:22 13 subpoena would not ultimately reach Dr. Savasman's hands?

09:28:27 14 THE WITNESS: None that was given to me, sir, none at  
09:28:31 15 all.

09:28:32 16 THE COURT: Did you leave with the impression, sir,  
09:28:34 17 that this manner of service, leaving or handing Ms. Moran the  
09:28:39 18 trial subpoena was how things normally operated at the medical  
09:28:45 19 examiner's office?

09:28:45 20 THE WITNESS: Very much so, sir. And I appreciate  
09:28:47 21 the way that you worded that because that is very typical of  
09:28:51 22 how most physicians or even, for that case, executives or  
09:28:58 23 attorneys and some larger organizations are served. You very  
09:29:02 24 rarely get to see them because they have such, what I use in  
09:29:06 25 my company, is barriers between them to keep people that



09:29:10 1 prevent you from actually seeing them. So quite often,  
09:29:13 2 administrative assistants or legal assistants or even  
09:29:16 3 attorneys for that matter will -- other attorneys will come  
09:29:19 4 out and accept on behalf of them. So it was very routine. It  
09:29:25 5 was extraordinarily routine. Almost as if they -- it was  
09:29:29 6 common for them as well. Like, they had no reservations, no  
09:29:32 7 pushback from that office at all.

09:29:35 8 THE COURT: Understood. Thank you, Mr. Crum. Let  
09:29:38 9 me -- I hate to flash sideways and forward on you, but going  
09:29:43 10 back to the service of the subpoena on Sergeant Branham at the  
09:29:47 11 state police detachment, on the fourth and final attempt as it  
09:29:57 12 was the successful attempt to serve that subpoena, were you  
09:29:59 13 given any indication from anyone there that those documents  
09:30:02 14 would not ultimately be placed in Sergeant Branham's hands?

09:30:07 15 THE WITNESS: Not at all, sir. Not at all. I would  
09:30:11 16 like to say, sir, since I am being asked that question,  
09:30:14 17 walking into the office that day, I was expecting  
09:30:17 18 confrontation, because they had intentionally refused service  
09:30:25 19 two times prior to that. So the reason that I went as opposed  
09:30:28 20 to the assigned process server was because I was expecting  
09:30:33 21 confrontation, and I have been doing this for a while, and I  
09:30:38 22 do know what the requirements are for a successful service in  
09:30:42 23 the State of West Virginia. But I did not receive any of  
09:30:45 24 that. When I was in, I explained who I was, and why I was  
09:30:48 25 there, and they very simply said, place it right here on the

09:30:52 1 desk in front of them, which was two inches from them, and I  
09:30:55 2 did, and I turned around and walked away.

09:30:58 3 THE COURT: Okay. Mr. Umina, anything you believe we  
09:31:03 4 need to know from Mr. Crum at this point, sir?

09:31:05 5 MR. UMINA: No, Your Honor. I believe he stated  
09:31:07 6 everything.

09:31:07 7 THE COURT: Thank you. Ms. Durst?

09:31:08 8 MS. DURST: Oh, no, Your Honor. I don't have  
09:31:10 9 anything. Thank you.

09:31:11 10 THE COURT: All right. Mr. Crum, sir, I certainly  
09:31:13 11 appreciate you making yourself available for us this morning.  
09:31:18 12 But I believe that's all the imposition on your schedule that  
09:31:22 13 we need to make as far as I know, so far today. Again, thank  
09:31:26 14 you very much for your time, sir.

09:31:27 15 THE WITNESS: All right. Thank you, sir. I  
09:31:28 16 apologize for not being able to be there in person.

09:31:31 17 THE COURT: Not at all. We appreciate your time.

09:31:31 18 (Conclusion of telephone call.)

09:31:40 19 THE COURT: All right. I asked about Sergeant  
09:31:43 20 Branham. Is Dr. Savasman here?

09:31:48 21 Sir, I am going to ask you to wait out in the hallway for  
09:31:51 22 a few moments if I could.

09:32:02 23 All right. Will someone fetch Sergeant Branham for us,  
09:32:07 24 please?

09:32:07 25 (Sergeant Branham entered the courtroom.)

09:32:22 1 THE COURT: If I could ask to you step forward, sir,  
09:32:25 2 before Madam Clerk so she can swear you in.

09:32:29 3 JP BRANHAM, WITNESS, SWORN.

09:32:39 4 THE COURT: Sergeant, you can have a seat here on the  
09:32:41 5 witness stand, sir. Thank you.

09:32:48 6 Sergeant -- is it sergeant? I'm sorry.

09:32:50 7 THE WITNESS: I'm a lieutenant.

09:32:53 8 THE COURT: Lieutenant, I'm sorry. I apologize.  
09:32:53 9 Lieutenant Branham, once you're seated, sir, if I could ask  
09:32:55 10 you to adjust that microphone so we can hear you. And you are  
09:32:58 11 free to take your mask off while on the stand given our  
09:33:01 12 Plexiglass and the rest.

09:33:03 13 Lieutenant, can I ask you to tell us your full name,  
09:33:06 14 please?

09:33:06 15 THE WITNESS: James P. Branham, III.

09:33:09 16 THE COURT: Good morning, sir. Thank you for being  
09:33:10 17 here. I know you have been subpoenaed by both parties in this  
09:33:13 18 case to testify at trial that started yesterday, but there are  
09:33:18 19 a couple issues we need to talk about before, you know, your  
09:33:22 20 trial testimony commences.

09:33:26 21 How many subpoenas have you received with respect to the  
09:33:28 22 trial of this case, sir?

09:33:30 23 THE WITNESS: One, sir.

09:33:31 24 THE COURT: All right. And when did you receive  
09:33:33 25 that?

09:33:33 1 THE WITNESS: I received that I believe it was  
09:33:35 2 March 12th. It would have been March 12th of this year, sir.  
09:33:42 3 THE COURT: And who issued that subpoena? Who signed  
09:33:44 4 it?  
09:33:45 5 THE WITNESS: It was signed by Tiffany Durst.  
09:33:48 6 THE COURT: Okay. Do you recall when you were served  
09:33:50 7 with that subpoena?  
09:33:52 8 THE WITNESS: I don't recall exactly what day I was  
09:33:54 9 served with it, no, sir.  
09:33:54 10 THE COURT: How were you served with that subpoena?  
09:33:56 11 THE WITNESS: I don't remember if it was sent by mail  
09:33:59 12 or by email, but I definitely received it.  
09:34:02 13 THE COURT: All right. But you believe you received  
09:34:03 14 it either by mail or by email?  
09:34:06 15 THE WITNESS: Yes, sir.  
09:34:06 16 THE COURT: No one handed it to you personally; is  
09:34:08 17 that correct?  
09:34:09 18 THE WITNESS: I don't recall, that's possible.  
09:34:11 19 THE COURT: All right. And what date does that  
09:34:16 20 subpoena command your appearance in this Court?  
09:34:19 21 THE WITNESS: For April 7th thru the 8th at 9:00 a.m.  
09:34:25 22 THE COURT: There has been, Lieutenant, an affidavit  
09:34:27 23 of service with respect to a subpoena that was issued by  
09:34:32 24 plaintiff's counsel in this case that a Nathan Crum indicates  
09:34:37 25 that he served at your detachment on March 24, 2021, about

09:34:44 1 1:45 in the afternoon. Have you have ever seen or received  
09:34:47 2 that subpoena?

09:34:48 3 THE WITNESS: No, sir, I have not.

09:34:50 4 THE COURT: Where is your office located at,  
09:34:50 5 Lieutenant?

09:34:53 6 THE WITNESS: My office is located within the Troop 1  
09:34:57 7 Facility. It's actually split offices. There is the  
09:34:59 8 detachment on one side and the troop headquarters on the  
09:35:02 9 opposite end of the building, and I'm in the troop  
09:35:02 10 headquarters.

09:35:04 11 THE COURT: And that's in Fairmont; is that correct?

09:35:06 12 THE WITNESS: That's correct, sir.

09:35:06 13 THE COURT: And is that where you were -- you are  
09:35:07 14 based out of?

09:35:08 15 THE WITNESS: That's where my office is based, yes,  
09:35:08 16 sir.

09:35:10 17 THE COURT: Do you have any other offices anywhere in  
09:35:12 18 the State of West Virginia?

09:35:13 19 THE WITNESS: No, sir.

09:35:18 20 THE COURT: How long have you been with the state  
09:35:20 21 police, sir?

09:35:21 22 THE WITNESS: A little over -- right at about 23  
09:35:24 23 years, sir.

09:35:25 24 THE COURT: Thank you very much for your service. I  
09:35:27 25 assume that this subpoena that you received by email or by

mail from defense counsel in this case, is not the first subpoena you've ever received?

THE WITNESS: No, sir, not at all.

THE COURT: If someone wanted to serve a subpoena upon you at your office in Fairmont, how does that work?

THE WITNESS: Well, whoever would be serving the subpoena would come in the entrance of the office. That is all locked down. There is a glass reception area where there is an office assistant located. They would -- depending on the subpoena, magistrate court subpoena, the process server drops them off, or some of those get faxed.

For a civil subpoena, the normal protocol is they ask who the subpoena is for. If that subject is there, they are served personally.

THE COURT: Are there ever any situations where subpoenas are left with folks at the front desk, reception, or whatever you all may call it or refer to it as?

THE WITNESS: No, sir. They will not accept it if we are not there.

THE COURT: Who is at the front reception desk or area?

THE WITNESS: Our office assistant.

THE COURT: Who is that?

THE WITNESS: Tracy Tichnell.

THE COURT: How long has Miss -- can you spell that

09:36:34 1 last name?

09:36:34 2 THE WITNESS: T-I-C-H-N-E-L-L.

09:36:40 3 THE COURT: And how long has Ms. Tichnell worked  
09:36:42 4 there for -- at that detachment?

09:36:44 5 THE WITNESS: That particular office is only  
09:36:47 6 approximately three years. She has probably a total of 20 or  
09:36:51 7 21 years with our department.

09:36:53 8 THE COURT: All right. But at this physical office,  
09:36:56 9 she has been there the entire three years?

09:36:57 10 THE WITNESS: That's correct, sir.

09:36:57 11 THE COURT: Is there anyone else -- if Ms. Tichnell  
09:37:00 12 is on break or gone for the day, anything like that, is there  
09:37:03 13 anyone else who is designated to fill in that spot?

09:37:06 14 THE WITNESS: No, sir. Once her shift is up, those  
09:37:09 15 front doors are locked. There is a sign to call the main  
09:37:12 16 office number. If she is not in, that would ring into our  
09:37:17 17 dispatch center.

09:37:19 18 THE COURT: Do you know if Ms. Tichnell was working  
09:37:20 19 at the detachment on March 24, 2021, at about 1:43 p.m.?

09:37:26 20 THE WITNESS: I don't know what her schedule was that  
09:37:28 21 day.

09:37:29 22 THE COURT: Do you recall what you were doing on  
09:37:31 23 March 24th?

09:37:32 24 THE WITNESS: No, sir. But I could look it up in my  
09:37:35 25 records.

09:37:36 1 THE COURT: I assume that you would not know  
09:37:40 2 Ms. Tichnell's schedule on March 16th, 17th, or 23rd either;  
09:37:44 3 is that correct?

09:37:45 4 THE WITNESS: I know she has taken some leave days  
09:37:47 5 here and there. They are in a separate office, so no, sir.

09:37:52 6 THE COURT: You said that the practice of the state  
09:37:54 7 police with respect to civil case subpoenas is that the front  
09:37:58 8 desk doesn't take those, that they are personally served; is  
09:38:01 9 that correct?

09:38:02 10 THE WITNESS: Their protocol is to ask who the  
09:38:04 11 subpoena is issued for. If that officer is there, that  
09:38:08 12 officer, of course, will come out and be served in person with  
09:38:10 13 the subpoena.

09:38:11 14 THE COURT: So, Ms. Tichnell will buzz in the back or  
09:38:13 15 call in the back to say Trooper X, someone is here for you?

09:38:17 16 THE WITNESS: Yes, she would make a phone call.

09:38:19 17 THE COURT: Have you been served in that manner with  
09:38:21 18 a civil subpoena at this Fairmont detachment before?

09:38:24 19 THE WITNESS: Yes, sir, I have.

09:38:25 20 THE COURT: How many times?

09:38:26 21 THE WITNESS: Approximately -- several subpoenas,  
09:38:29 22 probably two or three.

09:38:31 23 THE COURT: And how does it work in non-civil  
09:38:35 24 subpoenas, for example, a criminal case?

09:38:39 25 THE WITNESS: A criminal case, the local prosecutor's



09:38:40 1 office in Marion County will often fax those. Sometimes they  
09:38:43 2 will actually have the process server drop those off at the  
09:38:48 3 front desk.

09:38:48 4 THE COURT: What if it's a subpoena from defense  
09:38:50 5 counsel in a criminal case, does that work the same way?

09:38:52 6 THE WITNESS: It should work the same way, yes, sir.

09:38:52 7 THE COURT: And it's your testimony here, Lieutenant  
09:38:59 8 Branham that you have never seen this subpoena that was served  
09:39:05 9 on March 24, 2021, to your detachment; is that correct?

09:39:09 10 THE WITNESS: That's correct, sir. I have not.

09:39:11 11 THE COURT: Were you deposed in this case, sir?

09:39:12 12 THE WITNESS: Yes, sir.

09:39:13 13 THE COURT: When was that, do you remember?

09:39:14 14 THE WITNESS: It was --

09:39:15 15 THE COURT: That's an unfair question for you, I'm  
09:39:15 16 sure.

09:39:18 17 Mr. Umina, when was the Lieutenant deposed in this case?

09:39:21 18 MR. UMINA: July 11, 2019, Your Honor.

09:39:32 19 THE COURT: All right. It's been a couple years.  
09:39:35 20 Have you had any communication, Lieutenant, with Mr. Umina  
09:39:38 21 standing there, or anyone with his office since you were  
09:39:42 22 deposed back in July of 2019?

09:39:45 23 THE WITNESS: No, sir.

09:39:46 24 THE COURT: And when I say communication, I mean any  
09:39:48 25 kind, written, email, text, telephone, in person, or anything.

09:39:51 1 THE WITNESS: Not to my knowledge, no, sir.

09:39:53 2 THE COURT: Okay. Ms. Durst, is here, and  
09:39:55 3 Mr. Carroll is here. Do you know them?

09:39:58 4 THE WITNESS: From the previous deposition, yes, sir.

09:40:00 5 THE COURT: Sure, back in July. Have you had any  
09:40:01 6 communication of any kind with Ms. Durst, Mr. Carroll, or  
09:40:05 7 anyone from their office, since your deposition back in July  
09:40:09 8 of 2019?

09:40:11 9 THE WITNESS: No, sir.

09:40:13 10 THE COURT: Did you have any communication with them  
09:40:14 11 after you received the subpoena that they issued to you?

09:40:17 12 THE WITNESS: Yes. There was a letter to contact  
09:40:18 13 them at that time.

09:40:19 14 THE COURT: Did you do that?

09:40:20 15 THE WITNESS: Yes, I did.

09:40:21 16 THE COURT: When did you do that?

09:40:23 17 THE WITNESS: I believe it was yesterday because I  
09:40:28 18 remember at some point I left a message at their office.  
09:40:31 19 Nobody contacted me back. So I made a phone call yesterday to  
09:40:34 20 try to determine what time I was supposed to be here.

09:40:38 21 THE COURT: Before I delve any further, Ms. Durst,  
09:40:41 22 Mr. Carroll, do you represent the Lieutenant in this case or  
09:40:43 23 any other capacity?

09:40:45 24 MS. DURST: No, Your Honor. We do not represent  
09:40:48 25 Lieutenant Branham.

09:40:49 1 THE COURT: All right. Understood. Thank you.

09:40:50 2 So you spoke with Ms. Durst yesterday afternoon; is that  
09:40:52 3 correct?

09:40:53 4 THE WITNESS: That's correct, sir.

09:40:54 5 THE COURT: Tell me about that conversation, please.

09:40:57 6 THE WITNESS: I called with regards to this subpoena  
09:40:57 7 to try to determine what time, I know it was 9:00, what time  
09:41:02 8 my expected testimony was to be.

09:41:04 9 THE COURT: Do you recall what point of day yesterday  
09:41:05 10 you had that conversation?

09:41:06 11 THE WITNESS: That was earlier. I then received a  
09:41:11 12 phone call from her advising me to proceed down here to the  
09:41:17 13 court, that there was another subpoena which I wasn't aware  
09:41:21 14 of. So I was out actually doing physical training at the  
09:41:25 15 time, jogging, so I went to the office, got changed, and drove  
09:41:28 16 down here.

09:41:32 17 THE COURT: Mr. Umina, on this specific limited  
09:41:35 18 issue, is there anything further you believe we need to hear  
09:41:38 19 from the Lieutenant?

09:41:39 20 MR. UMINA: No, Your Honor.

09:41:40 21 THE COURT: Ms. Durst?

09:41:41 22 MS. DURST: No, Your Honor.

09:41:42 23 THE COURT: All right. Lieutenant, thank you very  
09:41:43 24 much. You can step down. If you wouldn't mind just having a  
09:41:46 25 seat in the gallery for a moment, please. Thank you.

09:41:50 1 (Witness steps down).

09:42:00 2 THE COURT: Can someone holler at Dr. Savasman,  
09:42:03 3 please?

09:42:21 4 MR. UMINA: Your Honor, I will wait for the Madam  
09:42:24 5 Clerk.

09:42:25 6 THE COURT: Doctor, if you wouldn't mind taking a  
09:42:27 7 seat for a second. We are wiping down the witness stand.  
09:42:30 8 We're going to ask you a couple questions here in a moment.

09:42:57 9 THE COURT: Thank you. Yes, Mr. Umina.

09:43:00 10 MR. UMINA: As to your previous question, that Docket  
09:43:04 11 Number 195 is where we filed the subject -- the most recent  
09:43:10 12 subpoena. I think it should be noted that we were  
09:43:12 13 specifically told by Mr. Crum to -- and I included an  
09:43:16 14 attachment to that. On the first attempted subpoena, we were  
09:43:21 15 specifically instructed by their office to change it from his  
09:43:25 16 name to in care of him in those instructions, to which they  
09:43:30 17 said they would then accept service. So that is why you see  
09:43:34 18 the difference there.

09:43:35 19 As to the next -- as to Dr. Savasman at ECF200, we have  
09:43:42 20 attached the fax receipt by that office, the signed fee  
09:43:48 21 agreement, a copy of the check that was provided as instructed  
09:43:52 22 in the fee agreement, as well as the certified mail return  
09:43:56 23 receipt for that check on ECF200.

09:44:00 24 THE COURT: I think that is 197.

09:44:03 25 MR. UMINA: Oh.

09:44:06 1 THE COURT: 200, I believe was the subpoena that  
09:44:08 2 Ms. Durst filed.

09:44:09 3 MR. UMINA: Oh, I'm sorry.

09:44:10 4 THE COURT: Based on this Court's instructions. No  
09:44:13 5 problem. I think all of the attachments you're referencing  
09:44:15 6 are attached to 197, and same on the subpoena to Lieutenant  
09:44:20 7 Branham, which is at 196. But I think everybody was just  
09:44:26 8 filing subpoenas after the Court requested that yesterday.

09:44:29 9 Dr. Savasman, sir, if you wouldn't mind stepping forward  
09:44:33 10 and pausing here before Madam Clerk so she can swear you in.  
09:44:38 11 Thank you.

09:44:50 12 DR. CAN SAVASMAN, GOVERNMENT'S WITNESS, SWORN

09:44:50 13 THE COURT: Thank you very much, Doctor. If you  
09:44:52 14 wouldn't mind having a seat here, sir. Once you are seated,  
09:44:55 15 adjust that microphone so we can hear you.

09:44:58 16 THE WITNESS: Thank you, Your Honor.

09:45:02 17 THE COURT: And yes, please, remove your mask on the  
09:45:04 18 witness stand. We have enough barriers and the rest around  
09:45:06 19 us, but again, thank you very much.

09:45:10 20 Could I ask you to state your full name for the record,  
09:45:12 21 sir?

09:45:13 22 THE WITNESS: My name is Can Miten Savasman.

09:45:18 23 THE COURT: All right. And I apologize for  
09:45:20 24 mispronouncing your name, Dr. Savasman.

09:45:23 25 THE WITNESS: It's spelled C-A-N. It's very

different.

THE COURT: Got you. Could you tell me what you do for a living, Doctor?

THE WITNESS: I am a forensic pathologist and deputy chief in the only medical examiner office in the state of West Virginia, and it's in Charleston. I have been working there for six, seven years.

THE COURT: You have been with that office for six or seven years?

THE WITNESS: Yeah. I am double board-certified in surgical pathology and also in forensic pathology. My background --

THE COURT: And, Doctor, I don't mean to interrupt, I just have a few questions this morning about a subpoena that was delivered to your office.

THE WITNESS: Okay.

THE COURT: The jury will be here momentarily, and I am sure we will all hear at great length about your qualifications and the rest at that point, but I just have a couple questions for you.

You mentioned you work in the only medical examiner's office we have in the State of West Virginia, and that's in Charleston, correct, sir?

THE WITNESS: Correct.

THE COURT: And you have been there for six or seven

09:46:30 1 years?

09:46:31 2 THE WITNESS: Yes.

09:46:31 3 THE COURT: I assume in addition to the work you do  
09:46:34 4 as an actual physician in connection with your employment at  
09:46:38 5 the medical examiner's office, that testifying either at trial  
09:46:44 6 or in deposition is something you do on a regular basis; is  
09:46:49 7 that correct, sir?

09:46:50 8 THE WITNESS: Yes.

09:46:50 9 THE COURT: Are you regularly served with subpoenas  
09:46:54 10 requiring you to attend either depositions or trials?

09:46:57 11 THE WITNESS: Well, we are working as forensic  
09:47:05 12 pathologists and our office is much, much, much busier than  
09:47:10 13 other states, so that is the reason that paperwork kind of  
09:47:15 14 things are handled by the administration office as much as  
09:47:21 15 possible. Unless they have questions, we would not be  
09:47:26 16 interfering with their jobs. And whenever the Court orders us  
09:47:30 17 to come over, we would come and -- back as a doctor rather  
09:47:35 18 than administration. That doesn't mean that my boss who is my  
09:47:40 19 supervisor, Dr. Allen Mock, he is the main person who orders  
09:47:46 20 everybody for this, including the administration office.

09:47:55 21 Basically we are not very into it, but any questions that  
09:47:58 22 you have, the person's name is Matt Izzo, about 140 people  
09:48:06 23 working under him. I am sure he will be answering your  
09:48:10 24 questions.

09:48:11 25 THE COURT: Sure. Do you know Millicent Moran, if I

09:48:15 1 am pronouncing her name correctly.

09:48:17 2 THE WITNESS: Yes. She is working as a case manager  
09:48:19 3 in our office.

09:48:20 4 THE COURT: How long has she worked there, do you  
09:48:20 5 know?

09:48:24 6 THE WITNESS: About three or four years, let's say,  
09:48:26 7 if not five.

09:48:27 8 THE COURT: Okay. Did you receive a subpoena in  
09:48:32 9 connection with this trial, Doctor?

09:48:36 10 THE WITNESS: I have been given yesterday by  
09:48:39 11 administration office that I should be here and I should  
09:48:43 12 testify. And usually, as I told you, I don't need to repeat  
09:48:48 13 again and again, but we have a very busy office, and -- for  
09:48:54 14 example, last year I did 450 autopsies, so that's the reason  
09:48:59 15 that, you know, we be given usually one or two days before and  
09:49:05 16 we have to do our job.

09:49:07 17 THE COURT: All right. When was the first time,  
09:49:09 18 Doctor, you were made aware that a subpoena had been issued  
09:49:12 19 requiring your attendance to testify at this trial?

09:49:16 20 THE WITNESS: Usually, they put in the beginning of  
09:49:18 21 the month. But my secretary would know that. And she would  
09:49:25 22 say to me about one or two months before, whenever they  
09:49:30 23 receive, and then I would recognize when they make the doctor  
09:49:35 24 schedule for cutting the autopsies -- the cutting the  
09:49:41 25 schedule, and then we would just keep on doing our job. And



09:49:44 1 then the last one or two days we would be really -- because  
09:49:48 2 you would tell us that we are really coming or you postponed  
09:49:52 3 the court; that kind of issue.

09:49:55 4 THE COURT: Okay. Subpoenas requiring your  
09:49:59 5 attendance at a trial, are those typically accepted by  
09:50:03 6 Ms. Moran in your office?

09:50:08 7 THE WITNESS: I don't recall the name of Moran,  
09:50:10 8 sorry.

09:50:11 9 THE COURT: Millicent Moran.

09:50:13 10 THE WITNESS: Okay. Okay. Millicent, I'm sorry.

09:50:15 11 THE COURT: No. That's all right.

09:50:16 12 THE WITNESS: Millicent, well Millicent is one of the  
09:50:20 13 persons receiving that, I believe.

09:50:23 14 THE COURT: Receiving subpoenas?

09:50:24 15 THE WITNESS: I believe most of them, let's say like  
09:50:26 16 that. And her boss is, as I told you that person  
09:50:32 17 administration, Matt Izzo.

09:50:38 18 THE COURT: Do you recall when your appearance at  
09:50:40 19 this trial here in Clarksburg, and I know it's a haul up the  
09:50:45 20 interstate to get here, do you know when that was put on your  
09:50:50 21 calendar?

09:50:50 22 THE WITNESS: Yeah. I mean, I don't recall right  
09:50:53 23 now, but I am sure they put it and what is the court informed  
09:50:58 24 me, Your Honor, they would tell me that, you know, I have been  
09:51:02 25 doing this job as you appreciate for a while. So they would

09:51:05 1 tell me that, doc, one of your autopsies are going, you know,  
09:51:10 2 tomorrow or the next day, would you please get prepared and I  
09:51:14 3 would sit down and study my final report. And it wouldn't  
09:51:22 4 take that much long time to remember and to be into it. And I  
09:51:25 5 didn't have any problem for this case also.

09:51:29 6 THE COURT: Sure. Well, I guess --

09:51:32 7 THE WITNESS: I don't recall exactly when did they --  
09:51:34 8 if I say something, I may be lying. I don't want to do that.

09:51:38 9 THE COURT: I'm not -- certainly not insinuating  
09:51:40 10 that. I am just trying to get a grasp here. Here's sort of  
09:51:43 11 the issue. We were here yesterday for trial and reached a  
09:51:48 12 point where we didn't have any witnesses, and the subpoena  
09:51:51 13 that was delivered to your office back in March --

09:51:57 14 THE WITNESS: I'm sure they did.

09:51:59 15 THE COURT: -- it indicated the trial, that the  
09:52:01 16 subpoena, at least, to you indicated yesterday morning at  
09:52:05 17 9:00 a.m. And I know how this works, and it's certainly  
09:52:09 18 always with the Court's encouragement that the parties  
09:52:12 19 communicate with witnesses to minimize the inconvenience and  
09:52:15 20 the rest, but I guess, you mentioned you got a phone call  
09:52:18 21 yesterday from someone telling you you had to be here today?

09:52:21 22 THE WITNESS: No. Millicent supervisor came near me,  
09:52:26 23 her name is Jessica, and she told me that, Doc, you have court  
09:52:31 24 tomorrow. And just would you please do that and it was  
09:52:35 25 something almost routine for me.

09:52:38 1 THE COURT: Okay. Doctor, thank you very much.  
09:52:41 2 That's all the questions I have at this point, because we have  
09:52:46 3 got to bring our jury in here in a few moments. You can step  
09:52:51 4 down, sir. Thank you very much.

09:52:52 5 THE WITNESS: Thank you, Your Honor.

09:52:52 6 (Witness steps down.)

09:52:56 7 THE COURT: We will get to the real reason you are  
09:52:58 8 here later today I am sure.

09:53:01 9 THE WITNESS: I apologize that I asked this question,  
09:53:04 10 because I am not clear, not about any questions, am I leaving?

09:53:13 11 THE COURT: No, you are not.

09:53:15 12 THE WITNESS: Sorry for asking that question.

09:53:16 13 THE COURT: That's all right, sir. But you can have  
09:53:18 14 a seat here in the courtroom for a moment. Given the time and  
09:53:22 15 that our jury was to return at 10:00, it's 9:55, we are going  
09:53:30 16 to take a break for a few moments, let counsel collect their  
09:53:35 17 thoughts before we begin.

09:53:37 18 We will confirm that all of our jurors are here to begin  
09:53:40 19 at 10:00. The Court is going to take under advisement the  
09:53:45 20 issues with respect to the subpoenas served upon -- I'm  
09:53:50 21 sorry -- Lieutenant Branham, Dr. Savasman, and the fact that  
09:53:55 22 we had no witnesses here yesterday, including this Court's  
09:53:59 23 further inquiry into Rule 45 as to if anyone is in contempt of  
09:54:02 24 this Court for disobeying properly served subpoenas. We are  
09:54:06 25 going to take that up at another time.

09:54:08 1 Because, again, as I made clear yesterday, we will  
09:54:11 2 efficiently use our jurors' time while we are here. So with  
09:54:14 3 that said, Lieutenant and Doctor, we have an order  
09:54:19 4 sequestering our witnesses during this trial, so we are going  
09:54:23 5 to have both of you to step out, but someone will summons you  
09:54:26 6 when it's your turn to take the stand. We are going to take a  
09:54:30 7 five-minute recess.

09:54:31 8 Mr. Umina be prepared to call your first witness at 10:00  
09:54:34 9 promptly. Thank you.

09:54:35 10 MR. UMINA: Yes, Your Honor.

09:54:37 11 (Break taken at this time 9:54 a.m. - 10:05 a.m.)

10:05:15 12 (At this time, a sealed hearing took place from 10:05  
10:05:15 13 a.m. - 10:29 a.m. Transcript filed separately under seal.)

10:29:01 14 THE COURT: Thank you. Anything we need to take up  
10:29:02 15 before we have our jurors?

10:29:06 16 Ms. Durst.

10:29:06 17 MS. DURST: No, Your Honor.

10:29:07 18 THE COURT: All right. Sir, can we have our jury  
10:29:10 19 please? Thank you.

10:29:15 20 (The jury entered the courtroom at 10:29 a.m.)

10:30:03 21 THE COURT: Good morning, ladies and gentlemen.  
10:30:05 22 Thank you all for being here again. My apologies for being  
10:30:08 23 behind the promised schedule. You will probably start  
10:30:13 24 becoming familiar with the reference I like to call "judge  
10:30:17 25 time." That's what I operate on. So my apologies that we are

1 behind schedule, we are actually on time based on my normal  
2 schedule.

3 But with that said, Mr. Umina, you may call your first  
4 witness.

5 MR. UMINA: Your Honor, the plaintiff calls  
6 Lieutenant JP Branham.

7 JP BRANHAM, PLAINTIFF'S WITNESS, SWORN

8 THE COURT: Thank you very much, Lieutenant. Once  
9 you are seated and comfortable, if you wouldn't mind adjusting  
10 that microphone. And please feel free to remove your mask  
11 while you are testifying.

12 Mr. Umina, you may proceed, sir.

13 DIRECT EXAMINATION

14 BY MR. UMINA:

15 Q. Lieutenant Branham, my name is Rodney Umina. We met back  
16 in July of 2019 when we took your deposition. Thank you for  
17 being here.

18 A. Yes, sir.

19 Q. Can you please introduce yourself to the jury?

20 A. My name is Lieutenant James Branham, III.

21 Q. And Lieutenant Branham, you have been a police officer  
22 for some time, correct?

23 A. Yes, sir.

24 Q. How long?

25 A. Approximately 23 years at this point.

10:31:49 1 Q. Okay. And what is your current position?

10:31:51 2 A. My current position is Troop 1 Logistics Officer.

10:31:55 3 Q. Can you tell the jury what that means in --

10:31:58 4 A. My responsibilities now are with all of our vehicles,

10:32:01 5 fleet, office maintenance, any repairs need done to the

10:32:05 6 offices, supplies for every detachment in our troop which

10:32:12 7 encompasses 13 counties from Hancock to Doddridge County.

10:32:14 8 Q. What was your position on August 2, 2017?

10:32:16 9 A. At that time I was the detachment commander of Fairmont

10:32:20 10 office.

10:32:21 11 Q. And on that date, you investigated the defendant shooting

10:32:28 12 and killing Philip Rhoades, correct?

10:32:30 13 A. Yes, sir.

10:32:30 14 Q. And you were the lead investigator, correct?

10:32:35 15 A. I was the primary, yes, sir.

10:32:38 16 Q. Okay. How did you come to be the primary investigator in

10:32:40 17 that shooting?

10:32:41 18 A. I believe at the time I was contacted by the 911 center

10:32:44 19 at the direction of the sheriff of Marion County. I was

10:32:48 20 advised that there was an officer-involved shooting.

10:32:52 21 Q. Lieutenant Branham, prior to investigating this shooting,

10:33:01 22 what additional training had you received in your career

10:33:06 23 regarding instances of where a police officer potentially

10:33:10 24 violated a member of the communities' constitutional rights

10:33:14 25 through the unlawful use of deadly force?

10:33:15 1 A. I have no extra training, but other than what I was  
10:33:21 2 trained at the academy.

10:33:22 3 Q. Somewhat similar question, a little different. Prior to  
10:33:28 4 investigating this shooting, what additional training had you  
10:33:31 5 received in your career regarding investigating instances  
10:33:35 6 where a police officer potentially violated their own  
10:33:40 7 departmental policies through the unlawful use of deadly force  
10:33:44 8 against the member of this community?

10:33:45 9 A. I have none.

10:33:46 10 Q. Now, let's talk about some specific facts that you  
10:33:50 11 observed during your investigation, and if at any time you  
10:33:54 12 don't recall, I have a copy of that here for you to refer to  
10:33:58 13 if you need to refresh your recollection.

10:34:00 14 A. Yes, sir.

10:34:00 15 Q. When you arrived on scene, approximately how much time  
10:34:06 16 had passed since the shooting?

10:34:08 17 A. I received a call, I believe, it was a little after  
10:34:11 18 3:00 p.m. I think I arrived on scene within a half-hour time  
10:34:15 19 span.

10:34:15 20 Q. About 30, 40 minutes?

10:34:17 21 A. Yes, sir.

10:34:17 22 Q. Okay. And to assist the jury, can you explain where this  
10:34:25 23 shooting occurred?

10:34:26 24 A. This shooting occurred in Marion County off of an area  
10:34:31 25 what's called Parrish Run Road. There is actually what looks

10:34:36 1 like a gas well site that actually kind of spurs off to the  
10:34:40 2 right off of Parrish Run Road.

10:34:43 3 Q. Parrish Run is a gravel road, correct?

10:34:45 4 A. Yes, sir.

10:34:46 5 Q. Pretty far out into the rural area of Marion County,  
10:34:51 6 that's fair, correct?

10:34:52 7 A. Yes, that's correct.

10:34:53 8 Q. Okay. Approximately what time of day was it?

10:34:58 9 A. This was early afternoon.

10:34:59 10 Q. So it was broad daylight, right?

10:35:01 11 A. Yes, sir.

10:35:02 12 Q. Okay. And the conditions that day, it wasn't raining,  
10:35:06 13 correct?

10:35:07 14 A. No, I don't believe it was raining.

10:35:09 15 Q. Sun was out?

10:35:10 16 A. Yes, sir.

10:35:10 17 Q. Was anyone at the gas well site during the shooting other  
10:35:19 18 than the defendant?

10:35:20 19 A. During the course of the investigation, I determined that  
10:35:26 20 there was another officer on scene at the time.

10:35:28 21 Q. What was his name?

10:35:29 22 A. Deputy Love.

10:35:32 23 Q. So when you arrived 30 to 40 minutes later after the  
10:35:36 24 defendant shot and killed Philip Rhoades, the defendant had  
10:35:39 25 already left the scene, correct?



10:35:40 1 A. That's correct.

10:35:40 2 Q. And Deputy Love had already left the scene, correct?

10:35:43 3 A. That's correct.

10:35:44 4 Q. And Sergeant Branham, while you're up there, as best that  
10:35:50 5 we possibly can, I'm guilty of it to, I'll try and let you  
10:35:53 6 finish your answer, and you let me try and finish my question  
10:35:56 7 just for Madam Court Reporter's sake here.

10:35:59 8 A. Yes, sir.

10:36:00 9 Q. So, again, within 30 to 40 minutes, both the shooter and  
10:36:08 10 the only witness to that shooting had left the scene, correct?

10:36:10 11 A. That's correct.

10:36:11 12 Q. During your investigation, you never had either the  
10:36:18 13 defendant or Corey Love come back to the gas well site and  
10:36:23 14 explain to you what happened, did you?

10:36:25 15 A. No, sir.

10:36:25 16 Q. And that's within the county in which they both work,  
10:36:29 17 right?

10:36:29 18 A. That's correct.

10:36:30 19 Q. Now, I am going to hand you what --

10:36:41 20 MR. UMINA: Your Honor, may I approach the witness?

10:36:42 21 THE COURT: You may.

10:36:43 22 BY MR. UMINA:

10:36:44 23 Q. Sergeant Branham, I'm going to hand you what's been  
10:36:47 24 premarked for identification purposes as Plaintiff's Exhibits  
10:36:49 25 2 through 20 in this binder.

10:36:54 1 Could you please look through those for a moment for me?

10:37:01 2 THE COURT: Which tabs were those again?

10:37:03 3 MR. UMINA: Your Honor, those are premarked Exhibits

10:37:05 4 2 through 20.

10:37:06 5 THE COURT: Thank you.

10:37:06 6 MR. UMINA: You're welcome, Your Honor.

10:37:14 7 BY MR. UMINA:

10:37:15 8 Q. Lieutenant Branham, please, just let me know when you

10:37:16 9 finish looking through those.

10:37:51 10 A. Okay.

10:37:52 11 Q. Those photos, they were part of your investigation?

10:37:56 12 A. Yes, sir.

10:37:57 13 Q. Do those appear to be in the same or substantially the

10:38:00 14 same condition as when you filed them with your report?

10:38:03 15 A. It was filed in a CD digital copy with my report, but

10:38:08 16 yes, these appear to be photographs.

10:38:11 17 MR. UMINA: Your Honor, I ask at this time that

10:38:14 18 Plaintiff's Exhibits 2 through 20 be admitted into evidence as

10:38:18 19 Plaintiff's Exhibits 2 through 20.

10:38:20 20 THE COURT: Any objection?

10:38:22 21 MS. DURST: No objection, Your Honor.

10:38:23 22 THE COURT: Without objection, so admitted and you

10:38:25 23 may publish as you see fit, Mr. Umina.

10:38:28 24 MR. UMINA: Thank you, Your Honor.

10:38:29 25 BY MR. UMINA:

10:38:30 1 Q. Now, let's walk through some of these photographs. I'm  
10:38:36 2 going to ask my co-counsel here to bring these up.

10:38:46 3 Let's start with Exhibit No. 2 which is marked. For the  
10:38:51 4 jury's reference, this shows the road as you come off of  
10:38:57 5 Parrish Run Road, that gravel road, to the gas well site,  
10:39:02 6 correct?

10:39:02 7 A. That is correct.

10:39:03 8 Q. And the road that we're talking about is not the gated  
10:39:08 9 road, it's the lower road on the bottom right here?

10:39:12 10 A. Yes, what appears to the road to the right of the gate,  
10:39:16 11 yes, sir.

10:39:16 12 Q. Okay. And you would agree with me that as you enter that  
10:39:22 13 road, where the Jeep was ultimately sitting, you're unable to  
10:39:26 14 see that, correct?

10:39:28 15 A. From this picture, no, sir, you can't.

10:39:31 16 Q. Yes. And that individual standing there, that was  
10:39:34 17 someone assisting in the investigation or someone on scene?

10:39:36 18 A. I believe it was -- it appears to be possibly a sheriff  
10:39:40 19 deputy maybe on scene still prior to me -- if I can remember  
10:39:44 20 correctly, I took the picture whenever I first arrived on  
10:39:47 21 scene is one of the first things.

10:39:48 22 Q. Yeah, that was my next question. And so the jury is  
10:39:53 23 clear. These were about the same conditions, what we see in  
10:39:56 24 the photograph, as when the defendant shot and killed Philip  
10:39:56 25 Rhoades.

10:40:00 1 This is 40 minutes later. You didn't come back days  
10:40:04 2 later and take these?

10:40:05 3 A. No, sir.

10:40:06 4 Q. Okay. Now, I'd like to refer to you Plaintiff's  
10:40:14 5 Exhibit 3. So what we're seeing here in the travel that the  
10:40:21 6 defendant would have -- that the route of travel the defendant  
10:40:25 7 would have taken -- you would have -- based on his account to  
10:40:28 8 you, he would have come up the road in the same manner that  
10:40:32 9 that Ford Explorer is right now, when entering the site,  
10:40:36 10 correct?

10:40:37 11 A. Yes, sir.

10:40:38 12 Q. Now, I will refer you to Plaintiff's Exhibit 4. This is  
10:40:45 13 when you are actually on that access road. And further  
10:40:49 14 reference, you would agree with me, that road is a little over  
10:40:52 15 200 feet long right, about 213 feet?

10:40:54 16 A. That sounds approximate, yes, sir.

10:40:58 17 Q. Okay. And again, sir, this is a photograph as you're,  
10:41:02 18 again, you're off of Parrish Run Road still entering the gas  
10:41:06 19 well site, so there is a little bit of length of this road  
10:41:10 20 before you get to the clearing?

10:41:12 21 A. Yes, sir.

10:41:12 22 Q. I'd like to refer to you Plaintiff's Exhibit 5. Now, you  
10:41:18 23 took this photo of tire tracks on the road?

10:41:23 24 A. Yes, sir.

10:41:24 25 Q. And so based on this photo, you would agree with me that

10:41:29 1 the ground that day was soft. The ground was still wet?

10:41:34 2 A. In the area that this was taken, yes, sir.

10:41:36 3 Q. Yeah. It was muddy out?

10:41:38 4 A. It's muddy in this area, you can tell in this photograph.

10:41:42 5 Q. And this area is about maybe 150 feet from where the Jeep  
10:41:47 6 ultimately was, correct?

10:41:48 7 A. That sounds approximate.

10:41:49 8 Q. I'd like to refer to you Plaintiff's Exhibit No. 6. So  
10:42:00 9 this photograph is being taken just back from where the  
10:42:07 10 clearing begins, correct?

10:42:08 11 A. Yes, sir.

10:42:09 12 Q. And although you cannot see it in the photograph, the  
10:42:16 13 Jeep is to the left behind that brush, correct?

10:42:21 14 A. Yes, sir.

10:42:21 15 Q. So as the defendant entered this clearing here, okay,  
10:42:29 16 right where that brush line is, to the left, before the bull  
10:42:37 17 starts, approximately that area is where he tells you that he  
10:42:38 18 jumped out of his vehicle, correct?

10:42:41 19 A. That sounds correct, yes, sir.

10:42:42 20 Q. Okay. And just to be clear, he did not put his vehicle  
10:42:46 21 into park before exiting his vehicle, correct?

10:42:49 22 A. It did not appear to be, no, sir.

10:42:52 23 Q. I'd like to refer to you Plaintiff's Exhibit Number 7.  
10:43:02 24 So in Plaintiff's Exhibit No. 7, that green equipment back  
10:43:09 25 there, that is oil and gas equipment, correct?

10:43:13 1 MS. DURST: Your Honor, I'm going to object.  
10:43:14 2 Mr. Umina is leading the witness throughout the entirety of  
10:43:18 3 his questioning thus far.

10:43:20 4 MR. UMINA: May we approach, Your Honor?

10:43:22 5 THE COURT: No. Objection is sustained. Rephrase  
10:43:25 6 your question.

10:43:27 7 BY MR. UMINA:

10:43:32 8 Q. Where is the Jeep in this photo?

10:43:37 9 A. You cannot see the Jeep in this photo. It would be to  
10:43:40 10 the left around the brush, to the left of the cruiser.

10:43:44 11 Q. Did the defendant's vehicle make contact with the oil and  
10:43:57 12 gas equipment in front of him?

10:43:58 13 A. I don't believe so.

10:44:00 14 Q. So it was in drive, right?

10:44:04 15 A. That's correct.

10:44:05 16 Q. And where approximately did it stop in front of that oil  
10:44:09 17 and gas equipment?

10:44:10 18 A. It's sitting at its final resting place upon my arrival,  
10:44:15 19 as shown in the photograph.

10:44:16 20 Q. I'd like to refer to you Plaintiff's Exhibit No. 8 now.  
10:44:23 21 Where is the Jeep in this photo?

10:44:25 22 A. You can see the top of the -- what appears to be the Jeep  
10:44:29 23 to the left of the cruiser and the side-view mirror just to  
10:44:33 24 the left of the cruiser in the photograph.

10:44:36 25 Q. I'd like to refer to you Plaintiff's Exhibit No. 9. When

1 we look at this photograph, okay, you already stated that the  
2 defendant exited his vehicle before the clearing, correct?

3 A. At some point in that area, yes, sir.

4 Q. Okay. What did Corey Love tell you that he did at the  
5 same time as the defendant when they entered that clearing?

6 A. If I'm not mistaken, he had also exited the vehicle at  
7 some point and went -- I believe he went to the front of the  
8 vehicle to try to provide coverage, was his statement.

9 Q. Okay. Do you know if he was aware at the time when he  
10 attempted to go to the front of the vehicle, did he tell you  
11 whether or not he knew the vehicle was moving as he attempted  
12 to work his way to the front of the moving vehicle?

13 A. I don't recall that. I do recall something to the effect  
14 that he realized the vehicle was moving. I don't know whether  
15 that was -- whether he was already out of the vehicle at that  
16 point.

17 Q. Do you know the approximate distance from the front of  
18 that clearing, meaning where the defendant and Corey Love  
19 exited their vehicle, to where the Jeep ultimately -- or  
20 excuse me, the cruiser ultimately rested? Do you know the  
21 approximate distance in feet?

22 A. Not without looking. I completed a diagram also that  
23 day, I'm not sure if I took that exact measurement.

24 Q. Would you like to refer to your -- the diagram that you  
25 prepared to verify whether or not you took a measurement?

10:46:37 1 A. Yes, sir.

10:46:38 2 MR. UMINA: May I approach, Your Honor?

10:46:38 3 THE COURT: You may.

10:46:39 4 BY MR. UMINA:

10:46:40 5 Q. I am handing you the diagram that you completed as part  
10:46:43 6 of your investigation in order to assist you in refreshing  
10:46:50 7 your recollection.

10:46:52 8 Please let me know when you have had a moment to look at  
10:46:54 9 that diagram.

10:46:55 10 A. I have looked at it. It's a little dark, I can't read  
10:47:00 11 the measurements, I can somewhat see the measurements they are  
10:47:01 12 labeled, but it's kind of hard to read.

10:47:03 13 Q. You agree with me you didn't measure from the front of  
10:47:06 14 that clearing to where that truck is, did you?

10:47:08 15 A. No, it does not appear that I measured from the end of  
10:47:14 16 the road to the end of the clearing where the cruiser is. No,  
10:47:17 17 sir.

10:47:17 18 Q. Why not?

10:47:18 19 A. I took measurements from a reference point, at the point  
10:47:22 20 of the intersected roadway which would have been Parrish Run  
10:47:25 21 and the entrance to the gas well site, and also to the wheels  
10:47:30 22 of the vehicles.

10:47:33 23 Q. But you did not take any measurements from where the  
10:47:38 24 defendant and Corey Love exited their vehicle to where the  
10:47:42 25 vehicle ultimately rested?



10:47:44 1 A. I did not take an overall width at that point, no, sir.

10:47:48 2 Q. And you didn't take an overall length either, did you?

10:47:51 3 A. No, sir, I did not.

10:47:53 4 Q. I'd like to refer you to Plaintiff's Exhibits No. 10.

10:48:12 5 Okay. Where, in relation to that Jeep, based on this

10:48:22 6 photograph -- okay? -- did the defendant tell you he was

10:48:27 7 standing when he fired seven shots to the front?

10:48:32 8 A. I believe he stated it was towards the front of the

10:48:35 9 vehicle.

10:48:38 10 Q. Did he state that he was standing in this thick brush

10:48:42 11 right here?

10:48:43 12 A. No, sir, he did not say anything about standing in the

10:48:46 13 thick brush.

10:48:47 14 Q. But that's what's in front of the vehicle?

10:48:49 15 A. With this photograph, yes, sir, it is.

10:48:52 16 Q. And, again, this was taken 45 minutes after the shooting?

10:48:56 17 A. That was taken upon my arrival at the scene, yes, sir.

10:48:59 18 Q. I'd like to refer you to Exhibit No. 11.

10:49:10 19 When we look at this photograph -- okay? -- what is in

10:49:18 20 this photo just to the right of the Jeep, behind it? And you

10:49:27 21 can look at the photograph in the binder as well if you can't

10:49:30 22 see clearly there.

10:49:37 23 A. Are you referring to the one on the ground, sir?

10:49:39 24 Q. Yes.

10:49:40 25 A. It looks -- looks something blue. I'm not sure what that

10:49:44 1 is at this point.

10:49:46 2 Q. Okay. Are you aware that Defendant Forsyth claims that  
10:49:52 3 the Jeep revved its engine, tires began spinning and then  
10:50:00 4 rapidly accelerated at him?

10:50:03 5 A. I know that he had stated that the vehicle had moved  
10:50:05 6 toward him in an aggressive manner, I'm not sure exactly what  
10:50:08 7 the exact wording was.

10:50:09 8 Q. Okay. Did you take photographs of any obstructions  
10:50:14 9 behind the Jeep to show how far back the Jeep could have  
10:50:20 10 possibly been or could have been?

10:50:23 11 A. I'm sure I took some photographs from behind the Jeep at  
10:50:26 12 some point, yes, sir.

10:50:27 13 Q. Okay. That thing sticking out, out of the ground to the  
10:50:32 14 right of the Jeep -- okay? -- are you aware that that is a  
10:50:36 15 pipe?

10:50:39 16 A. That appears to be a pipe, yes, sir.

10:50:40 17 Q. Okay. And this area to the left of the gas well site, do  
10:50:47 18 you recall what the terrain was like?

10:50:50 19 A. Very brushy.

10:50:51 20 Q. And what about any changes in elevation, is that --

10:50:56 21 A. I believe there is an upslope.

10:50:58 22 Q. Would you agree it's a pretty big upslope over to the  
10:51:02 23 left?

10:51:02 24 A. I didn't measure it but, yes, it appears to be from the  
10:51:05 25 photograph as well that there is a slope there.

1 Q. Okay. So the top of your photograph, does that -- the  
2 top left -- does that capture how high of a change in  
3 elevation that you have on the left-hand side of that, or does  
4 that hill continue to go upward?

5 A. I don't recall exactly how far it goes up. I mean, from  
6 the photograph, I mean, you can see that there is an  
7 embankment.

8 Q. There is an embankment. And at the bottom of that  
9 embankment do you recall what the terrain was like?

10 A. I believe there is some -- it appears to be some sort of  
11 a ditch almost.

12 Q. So just to be clear, within feet behind that, no more  
13 than a couple of car lengths, there is a ditch and then a  
14 large hillside that goes up in elevation covered with thick  
15 brush?

16 A. That would be fair to say, yes, sir.

17 Q. I'd like to refer to you Plaintiff's Exhibit No. 12.  
18 Where in relation to this vehicle -- okay? -- are you able to  
19 state that the defendant was standing based on his statements  
20 to you when he shot and killed Philip Rhoades?

21 A. I'm not sure exactly where he was standing at this point  
22 in time. I don't know if the vehicles had moved prior to me  
23 arriving on scene. The photographs depict the vehicles as  
24 they were shown as I arrived on scene, so I'm not sure exactly  
25 where he was out or positioned at the vehicle.

1 Q. So in the course of your investigation into the shooting  
2 death of a citizen, you did not determine where the shooter  
3 was standing?

4 A. He advised he was in front of the vehicle.

5 Q. But my question to you is: Can you state, based on your  
6 investigation, where in front of the vehicle he was standing?

7 A. No, sir, I cannot.

8 Q. I'd like to refer to you Plaintiff's Exhibit 13.

9 Now, as we look at this photograph here -- okay? -- the  
10 defendant has claimed that the vehicle came directly at him.  
11 It didn't turn, it didn't veer, tires spinning, and in an  
12 aggressive acceleration at him.

13 As you look at this photograph, is there anything other  
14 than brush and hillside and a ditch behind that Jeep?

15 A. Behind the Jeep appears to be some vegetation and appears  
16 there is an embankment.

17 Q. I'd like to refer you now to Plaintiff's Exhibit No. 14.

18 Why did you take this photograph?

19 A. This photograph shows bullet holes within the vehicle.

20 Q. This photograph, does it depict all of the bullet holes  
21 in the vehicle?

22 A. These were entry holes, they appear to be.

23 Q. Are you aware of an additional bullet hole below the  
24 lowermost bullet hole that is clearly depicted in this  
25 photograph?

10:54:38 1 A. Are you talking toward, if you're looking at the  
10:54:43 2 photograph, to the left of the windshield wiper?  
10:54:47 3 Q. So if we look at left windshield wiper blade, yeah, just  
10:54:51 4 to the right of it. You have a -- that's the lowermost that's  
10:54:55 5 apparent by this photo. Are you aware of another bullet hole  
10:54:57 6 that is a little bit lower than that?  
10:54:59 7 A. It's kind of hard to tell from the photo.  
10:55:02 8 Q. Okay. What's your understanding of how many times the  
10:55:05 9 defendant fired into the Jeep?  
10:55:07 10 A. I believe it was seven, sir.  
10:55:09 11 Q. Okay. I'd like to refer to you Plaintiff's Exhibit  
10:55:14 12 No. 15.  
10:55:19 13 Why did you take this photograph?  
10:55:20 14 A. It shows the front of the vehicle. It shows the entry  
10:55:24 15 points of the bullet holes. It also shows some area behind  
10:55:28 16 the vehicle.  
10:55:29 17 Q. And then that, to the right of the Jeep, is that that  
10:55:39 18 pipe that we just talked about, at the gas well site behind  
10:55:45 19 the Jeep on the ground?  
10:55:46 20 A. There appears to be what appears to be a pipe in the  
10:55:49 21 photograph to the right of the Jeep, yes, sir.  
10:55:51 22 Q. Okay. I would like to refer you to Plaintiff's Exhibit  
10:55:57 23 No. 16. The two main bullet holes in the front windshield,  
10:56:07 24 did those exit the back of the Jeep?  
10:56:11 25 A. There were some exit holes. I don't recall exactly how

1 many exit holes. I believe there was approximately two, two  
2 or three to the rear of the Jeep.

3 Q. Okay. And at least two of the exit holes in the rear of  
4 the Jeep coordinate with the two in the very front windshield  
5 there, would you say that's a fair statement?

6 A. I would say the exit holes came from bullets that had  
7 entered this vehicle. I'm not a ballistics expert, I don't  
8 want to sit here and tell you what the trajectory would be. I  
9 would say it came from any of these bullet holes that entered  
10 it.

11 Q. So, Sergeant Branham, you investigated a shooting death  
12 of a citizen, and are you -- is it your claim then though, you  
13 don't know -- you are not a ballistics expert, so you don't  
14 know where bullets go when they are shot?

15 A. It probably would depend on the circumstances. Like I  
16 said, there were a couple exit holes out of this vehicle. I'm  
17 sure they probably came from a few of the bullets that entered  
18 this vehicle.

19 Q. Did you have a ballistics expert ever look into this  
20 vehicle to verify what the defendant said or did not say?

21 A. No, sir.

22 Q. Why not?

23 A. I didn't have one on hand. The only person that had some  
24 sort of training was a crime scene team that we had when I  
25 executed the search warrant on this vehicle.

10:57:35 1 Q. Are you supposed to treat this shooting death like a  
10:57:37 2 homicide, like any other homicide?

10:57:39 3 A. Yes, sir.

10:57:39 4 Q. And you didn't hire a ballistics expert to verify  
10:57:42 5 trajectory of the bullets that killed a man?

10:57:44 6 A. No, sir, I did not hire a ballistics expert.

10:57:47 7 Q. Does the West Virginia State Police Office have  
10:57:50 8 ballistics experts available?

10:57:52 9 A. No, sir, not to my knowledge.

10:57:55 10 Q. Does the West Virginia State Police when investigating  
10:58:00 11 homicides ever use ballistics experts?

10:58:04 12 A. Would say yes, sir.

10:58:05 13 Q. I'd like to refer you to Plaintiff's Exhibit No. 17.  
10:58:11 14 What does this show?

10:58:13 15 A. This shows the windshield and the front cowl of the  
10:58:23 16 vehicle.

10:58:26 17 Q. Lieutenant Branham, can you tell the jury what a cowl is?

10:58:30 18 A. A cowl would be the area where you can see the vents at  
10:58:35 19 the bottom of the windshield, the area -- a lot of newer  
10:58:38 20 vehicles are plastic.

10:58:41 21 Q. I think there were several people who didn't know what  
10:58:44 22 that meant, including myself, so thank you.

10:58:46 23 THE COURT: Thank you for clarifying.

10:58:46 24 BY MR. UMINA:

10:58:50 25 Q. I'd like to refer you now to Plaintiff's Exhibit

10:58:53 1 Number 18.

10:58:55 2 What does this photograph depict?

10:58:57 3 A. This depicts from standing in the open area toward the  
10:59:02 4 entrance to that site.

10:59:03 5 Q. Okay. And, again, just so we're clear, you don't have  
10:59:09 6 any accurate measurements, at least in the course of your  
10:59:12 7 investigation, as to the width of the gas well site or the  
10:59:17 8 length of the gas well site; is that fair?

10:59:20 9 A. I do not have overall measurements of that. I do have  
10:59:24 10 measurements where the vehicles had come to rest.

10:59:28 11 Q. But you measured that from the beginning of the access  
10:59:32 12 point which was about 213 feet away on a windy road.

10:59:38 13 A. It was 213 approximately to the opening of that site  
10:59:43 14 through the entrance of that road, yes, sir.

10:59:45 15 Q. I'd like to refer you now to Plaintiff's Exhibit 19.

10:59:55 16 Why didn't you use a reference point that's fixed in the  
10:59:58 17 gas well site like this piece of equipment here?

11:00:01 18 A. Because I didn't know if that equipment could change at a  
11:00:04 19 later time. I'm not familiar with how to operate these gas  
11:00:08 20 well sites is the reason why I didn't use that.

11:00:11 21 Q. Did you ever contact the gas company and ask them if they  
11:00:14 22 have any plans to move the oil and gas equipment?

11:00:17 23 A. No, sir, I had not.

11:00:18 24 Q. Would you agree with me, it looked like that equipment  
11:00:20 25 had been there for quite some time?



11:00:23 1 A. It looks like there's a new fitting on the equipment. It  
11:00:25 2 looks like it had been there for a while, but like I said, I'm  
11:00:27 3 not an expert in the oil and gas industry, and I'm not sure  
11:00:32 4 whether that equipment would stay on that site.

11:00:33 5 Q. Okay. Can we go to Plaintiff's Exhibit No. 20, please?  
11:00:39 6 This shows the equipment, correct?

11:00:41 7 A. Yes, sir.

11:00:41 8 Q. And your testimony is that you don't believe that that  
11:00:44 9 equipment looks dated?

11:00:47 10 A. No, sir, I did not say that. That does look dated.

11:00:51 11 Q. You didn't just say that the equipment didn't look dated  
11:00:54 12 to the jury?

11:00:55 13 A. No, I said there was a new fitting on it at some point.  
11:00:58 14 That equipment does look dated. I believe I stated I'm not  
11:01:02 15 sure whether that equipment, at a later time, would be moved.  
11:01:05 16 That's why I didn't use that as a reference point.

11:01:07 17 Q. Okay. But when you went to the site, you had this dated  
11:01:11 18 looking equipment with fixed reference points, and you chose  
11:01:13 19 not to use those, correct?

11:01:15 20 A. No, sir, I did not use those.

11:01:17 21 Q. You took a measurement 213 feet down a windy road that  
11:01:23 22 you can't see around as a reference point?

11:01:24 23 A. I used the reference point as the point of intersect of  
11:01:28 24 Parrish Run Road and the other berm of the access road.

11:01:32 25 Q. Hundreds of feet away?

11:01:34 1 A. It was approximately 200 some feet, yes, sir.

11:01:36 2 Q. And from the entrance of the gas well site to that  
11:01:41 3 equipment is less than 50 feet; is that fair?

11:01:45 4 A. That would be fair to say, yes, sir.

11:01:49 5 Q. And then in width it's only about 33 feet?

11:01:55 6 A. I didn't measure the overall width, but that would appear  
11:01:58 7 correct, yes.

11:01:59 8 Q. So, again, just so the jury understands this because, you  
11:02:03 9 know, you observed a lot of the facts here. The facts that we  
11:02:07 10 have to bring to them.

11:02:09 11 You were investigating a homicide and you did not take a  
11:02:13 12 measurement of the area in which the homicide occurred?

11:02:18 13 A. I did take measurements. I did not take an overall  
11:02:21 14 measurement of the width of the gas well site.

11:02:24 15 Q. I want to talk to you about some things that you  
11:02:35 16 observed. Let me switch to this for just a moment. Okay.

11:03:14 17 MR. UMINA: Your Honor, can you ask if everyone on  
11:03:16 18 the jury can see that?

11:03:19 19 THE COURT: Can you try to zoom in on that?

11:03:23 20 MR. UMINA: No, Your Honor, I want this to --

11:03:25 21 THE COURT: You may need to slide -- just slide that  
11:03:29 22 down.

11:03:30 23 MR. UMINA: Okay. I'm trying to make it as big --  
11:03:35 24 okay. Are you able to see this now?

11:03:37 25 THE COURT: I think so. Can everybody see it okay?

11:03:39 1 All right. Seeing no indication of the contrary.

11:03:41 2 Thank you, Mr. Umina, you may proceed, sir.

11:03:43 3 MR. UMINA: Thank you, Your Honor.

11:03:44 4 BY MR. UMINA:

11:03:45 5 Q. You observed -- okay? -- this is a statement from your  
11:03:50 6 report, okay? You observed that the police cruiser was  
11:03:58 7 running and in drive, correct?

11:04:02 8 A. Yes, sir.

11:04:03 9 Q. You did not qualify that language at all, did you?

11:04:07 10 A. I don't understand your question, sir.

11:04:11 11 Q. Okay. I'm going to show you another statement, this is  
11:04:22 12 regarding the Jeep. You wrote, "The undersigned officer  
11:04:28 13 observed that the Jeep was running and appeared to be in  
11:04:35 14 gear."

11:04:37 15 A. Yes, sir.

11:04:37 16 Q. So you qualified your language about it being in gear,  
11:04:44 17 right? You said it appeared to be in gear?

11:04:46 18 A. Yes, sir, I said it appeared to be.

11:04:48 19 Q. When you looked at the police officer's cruiser, you  
11:04:53 20 didn't qualify that language. You knew definitively that it  
11:04:58 21 was running; is that fair?

11:05:00 22 A. Yes, sir, I did put it was running.

11:05:02 23 Q. And in drive?

11:05:04 24 A. Yes, sir, that's what that states.

11:05:06 25 Q. So you had no question about whether or not the officer's

11:05:10 1 vehicle was in drive; is that fair?

11:05:12 2 A. It says, "The vehicle appeared to be open and the vehicle

11:05:15 3 was running and in drive." Yes, sir.

11:05:17 4 Q. Okay. But you wrote that it appeared to be in gear as it

11:05:21 5 relates to the Jeep. You didn't say that it was in gear?

11:05:25 6 A. No, sir, it says, "it appeared to be."

11:05:27 7 Q. What kind of transmission did the police cruiser have?

11:05:43 8 A. It's automatic transmission.

11:05:45 9 Q. What kind of transmission did the Jeep have?

11:05:49 10 A. That would have been a standard.

11:05:52 11 Q. On that day, were you aware of how to drive a manual

11:05:56 12 transmission vehicle?

11:05:57 13 A. No, sir.

11:05:58 14 Q. So, again, you're the investigating state trooper into

11:06:06 15 the shooting death of a citizen that involved allegations that

11:06:10 16 a manual transmission vehicle was used as a weapon against an

11:06:17 17 officer causing him to shoot and kill that person. And is it

11:06:20 18 your testimony that you did not know how the vehicle, in which

11:06:24 19 he claimed to be a weapon, operated?

11:06:28 20 A. I have never operated a standard, no, sir.

11:06:31 21 Q. Did you ever ask anyone or anyone who assisted you how a

11:06:43 22 manual transmission vehicle operates?

11:06:45 23 A. No, sir, I don't believe I did.

11:06:47 24 Q. How long after arriving on scene did you make the

11:06:57 25 observation about what the police cruiser was doing and what

11:07:03 1 the Jeep was doing in terms of what we just spoke about?

11:07:07 2 A. At some point, I don't know exactly when during that  
11:07:12 3 on-scene time that that was discovered where I noted that.

11:07:15 4 Q. If I told you that you noted that 52 minutes after the  
11:07:19 5 shooting, would you have any reason to disagree?

11:07:22 6 A. I don't know exactly how long I was on scene, no, sir.

11:07:25 7 Q. Does that sound about right?

11:07:27 8 A. Like I said, without referring to my report, I'm not sure  
11:07:31 9 exactly when I left the scene, no.

11:07:32 10 Q. Okay. I will refer you. If you open your report, when  
11:07:40 11 you get into the narrative of your report, if you turn to  
11:07:53 12 page 1, the bottom paragraph on that page. Do you know now  
11:08:12 13 what time you made an observation about the Ford Explorer?

11:08:19 14 A. I put that I started beginning to take photographs at  
11:08:23 15 1545, which is at 3:45 p.m. I don't believe I noted in my  
11:08:28 16 report an exact time when I noted that with the vehicles.

11:08:31 17 Q. Would it have been after 3:45 p.m.? Your report is in  
11:08:39 18 chronological order.

11:08:40 19 A. That's correct. It is.

11:08:41 20 Q. So would that observation have occurred after 3:45 p.m.?

11:08:46 21 A. That's possible.

11:08:47 22 Q. Is it likely?

11:08:49 23 A. Looks like I was on scene until approximately 4:15 p.m.  
11:08:57 24 so somewhere between 3:45 and 4:15.

11:09:03 25 Q. How long did your total investigation at the scene last?

11:09:07 1 A. From -- I arrived on scene at 1532, looks like I departed  
11:09:17 2 the scene at 4:15.

11:09:22 3 Q. I'd like to refer you to page 2, next page, top  
11:09:31 4 paragraph. So by that same logic, when was the observation of  
11:09:37 5 the Jeep made approximately?

11:09:38 6 A. Observation of the Jeep with regards to what it appeared  
11:09:44 7 would have been anywhere between, I would say, 3:45 to 4:15.  
11:09:55 8 I put it in that paragraph during the time that I was taking  
11:10:00 9 digital photographs.

11:10:01 10 Q. Okay. When you observed the Jeep to still be running,  
11:10:06 11 approximately 52 minutes after the shooting, was there anyone  
11:10:10 12 in it pushing the gas or the clutch?

11:10:14 13 A. No, sir.

11:10:14 14 Q. Was the Jeep sitting on flat ground?

11:10:28 15 A. It was in an area near a ditch. It was fairly level.

11:10:44 16 Q. And what time did you leave the scene?

11:10:49 17 A. Looks like I departed the scene at 4:15 p.m.

11:10:53 18 Q. So, well, how long was your investigation there about 40,  
11:10:58 19 50 minutes maybe?

11:11:00 20 A. Approximately, yes, sir.

11:11:04 21 Q. And you never went back?

11:11:08 22 A. To that scene, I don't recall if I did on that date.

11:11:13 23 Q. What did you do after you left the scene of the shooting  
11:11:18 24 on August 2nd, 2017?

11:11:22 25 A. I believe I traveled to the hospital in Fairmont.

11:11:25 1 Q. Why did you travel to the hospital in Fairmont?

11:11:28 2 A. To attempt to meet with the officers that were involved.

11:11:31 3 Q. During your investigation, did any other officer assist

11:11:36 4 in investigating at the hospital?

11:11:37 5 A. Yes, sir.

11:11:38 6 Q. Is it -- is Corporal McDugal the officer who performed

11:11:47 7 the gunshot residue test on the defendant?

11:11:48 8 A. Yes, sir.

11:11:49 9 Q. Was Corporal McDugal able to successfully perform a

11:11:54 10 gunshot residue test on the defendant?

11:11:57 11 A. Yes. He performed a gunshot residue test on the

11:12:01 12 defendant and the two officers that were involved.

11:12:02 13 Q. Okay. Had the defendant washed his hands before that

11:12:07 14 gunshot residue test?

11:12:09 15 A. Yes, sir.

11:12:10 16 Q. Had Corey Love washed his hands before the gunshot

11:12:13 17 residue test?

11:12:14 18 A. Yes, sir.

11:12:14 19 Q. Did you speak to the defendant at the hospital?

11:12:22 20 A. Yes, sir.

11:12:23 21 Q. What did he tell you?

11:12:24 22 A. He stated he wanted to speak to me at a later time.

11:12:28 23 Q. So he did not give you a statement at the hospital?

11:12:31 24 A. Not at that time, no, sir.

11:12:32 25 Q. But you went there to speak to him?

11:12:36 1 A. I went there to speak to him and secure other evidence  
11:12:39 2 such as their duty weapon.

11:12:41 3 Q. Did you speak with Corey Love at the hospital?

11:12:43 4 A. I believe I did, yes, sir.

11:12:45 5 Q. What did he tell you?

11:12:49 6 A. Pretty much the same thing, he wanted to speak to me at a  
11:12:52 7 later time.

11:12:53 8 Q. If you're investigating a homicide, why did you not  
11:12:57 9 insist that the defendant and Corey Love come to the state  
11:13:03 10 police barracks for questioning immediately after the  
11:13:06 11 shooting?

11:13:07 12 A. They were involved in a critical incident. I was just  
11:13:10 13 affording them time to meet with me. I did not interview them  
11:13:15 14 on that day, so they wanted to talk to me at a later date.

11:13:19 15 Q. Do you do that with other homicide suspects?

11:13:22 16 A. Not usually, no, sir.

11:13:23 17 Q. So you wouldn't generally just allow someone who you knew  
11:13:30 18 just shot and killed someone to come talk to you at a later  
11:13:33 19 date, right?

11:13:33 20 A. No, sir, I wouldn't think I would.

11:13:36 21 Q. When did you speak to Corey Love? Let me rephrase that.  
11:13:50 22 When did you next speak with Corey Love after leaving the  
11:13:53 23 hospital?

11:13:54 24 A. I believe that was by phone, it would have been on August  
11:13:59 25 3.



11:14:12 1 MR. UMINA: Is the overhead still on?

11:14:14 2 THE CLERK: Yes.

11:14:14 3 BY MR. UMINA:

11:14:35 4 Q. So this is on August 3rd, the day after the shooting, you  
11:14:43 5 wrote at approximately 1546 hours that you contacted Deputy  
11:14:49 6 Love in order to schedule an interview.

11:14:52 7 Now, in your report, he advised you that the -- that he  
11:14:57 8 and the defendant wished to meet with you together; is that  
11:15:03 9 fair?

11:15:04 10 A. Yes, sir, that's what he stated.

11:15:07 11 Q. Okay. Now, Corey Love's deposition testimony is going to  
11:15:15 12 be heard by the jury in just a little bit. So if he said the  
11:15:28 13 next time I talked to him -- excuse me.

11:15:35 14 If he says, they called -- you called and told him to  
11:15:42 15 show up, and he believes that Forsyth contacted you to set up  
11:15:53 16 the call -- okay? -- and he claims to have not talked to you.

11:15:56 17 Down here at the bottom, "Did Trooper Branham ever  
11:16:08 18 contact you?" "Not that I can remember." Right?

11:16:11 19 He says -- we asked him in his deposition. "So it's your  
11:16:13 20 understanding that Trooper Branham told Deputy Forsyth to come  
11:16:16 21 in?" "Yes, sir." "Did Trooper Branham ever contact you?"

11:16:21 22 "Not that I can remember."

11:16:22 23 That's not a true statement, right? You contacted him?

11:16:24 24 A. I contacted him, yes, sir.

11:16:26 25 Q. And he told you that he wanted to come and talk to you

11:16:30 1 with Forsyth?

11:16:31 2 A. That's correct.

11:16:32 3 Q. And, in fact, you didn't speak to Forsyth until after you  
11:16:46 4 talked to Love, right?

11:16:48 5 A. That's correct.

11:16:49 6 Q. So if Love said that you talked to Forsyth first, and  
11:16:54 7 then called him and told him when to come in, that would be  
11:16:58 8 untrue, wouldn't it?

11:16:59 9 A. That's untrue. I spoke with Deputy Love before I spoke  
11:17:02 10 with Deputy Forsyth.

11:17:03 11 Q. Okay. And again, if deputy -- if Deputy Forsyth said  
11:17:13 12 that he never talked to Deputy Love about coming to give a  
11:17:17 13 statement to you, based on this, that wouldn't be true either,  
11:17:20 14 would it? Because at 1600 hours you were contacted by  
11:17:27 15 Deputy Forsyth and he told you that he wanted to meet you with  
11:17:31 16 Deputy Love?

11:17:32 17 A. That's correct.

11:17:32 18 Q. You wouldn't put false information here, would you?

11:17:35 19 A. No, sir.

11:17:36 20 Q. So if they made statements to the contrary, those are  
11:17:40 21 lies, would you agree with me?

11:17:42 22 A. According to my report, I contacted Deputy Love prior to  
11:17:47 23 speaking with Deputy Forsyth; that's correct.

11:17:49 24 Q. And if he said that you just called him after you talked  
11:17:53 25 to Forsyth and told him when to come in, that's not true,

11:17:56 1 correct?

11:17:56 2 A. That is not true, no, sir.

11:17:58 3 Q. Just to be clear, the defendant told you he wanted to  
11:18:13 4 give a statement with Corey Love, correct?

11:18:17 5 A. That's correct.

11:18:18 6 Q. When did you actually speak with the defendant and Corey  
11:18:32 7 Love? On what day?

11:18:33 8 A. That would have been on August 4th.

11:18:38 9 MR. UMINA: May I have the overhead again, please?

11:18:50 10 BY MR. UMINA:

11:18:53 11 Q. Did they arrive at the detachment together?

11:18:57 12 A. I'm not sure if they came in the same vehicle, I don't  
11:19:00 13 recall, but they were there at the same time, yes, sir.

11:19:02 14 Q. Okay. And this says you advised them that they had to be  
11:19:06 15 interviewed separately?

11:19:08 16 A. That's correct.

11:19:09 17 Q. So if we asked him, "Did you all attempt to give your  
11:19:22 18 statements or speak to Trooper Branham at the same time  
11:19:25 19 instead of separately?" And he said, "No, sir." And we  
11:19:28 20 asked, "Has that never occurred?" And he said, "Uh-Huh."  
11:19:31 21 That's a lie too -- right? -- because you told them they had  
11:19:34 22 to give their statements separately?

11:19:36 23 MS. DURST: Your Honor, could I have Mr. Umina tell  
11:19:39 24 me what page that testimony is from?

11:19:40 25 MR. UMINA: It is page 36, line 14 through 23.

11:19:44 1 THE COURT: Request granted, Ms. Durst.

11:19:47 2 MS. DURST: Thank you, Your Honor.

11:19:48 3 MR. UMINA: And for Madam Court Reporter's reference  
11:19:53 4 and Ms. Durst, the previous testimony that was put up there  
11:19:56 5 was page 34, lines 1 through 21.

11:20:07 6 BY MR. UMINA:

11:20:07 7 Q. I want to ask you another question about that gunshot  
11:20:10 8 residue test. So you stated in here that Deputy Love had  
11:20:23 9 advised that he also washed his hands?

11:20:25 10 A. That's correct.

11:20:27 11 Q. Okay. So if we look at page 20, lines 21 through 23 of  
11:20:36 12 his deposition, and we asked him under oath, "Had you washed  
11:20:41 13 your hands prior to doing that test?" And he said, "No, sir."  
11:20:45 14 That would be a lie; is that fair?

11:20:48 15 A. Yes, sir.

11:20:48 16 Q. Whose statement did you take first?

11:21:11 17 A. I believe I took a statement from Deputy Forsyth first.

11:21:17 18 Q. Did he have any written materials with him during that  
11:21:20 19 interview?

11:21:21 20 A. I don't recall if he brought any, I know that he had, I  
11:21:26 21 believe he had prepared a typed or written statement that he  
11:21:30 22 possibly could have brought that to the interview.

11:21:32 23 Q. Do you recall him reading from that statement?

11:21:35 24 A. Yes, sir, somewhat, I think I do at this point.

11:21:40 25 Q. Would you agree that the majority of his statement to you

11:21:43 1 was from a written prepared statement?

11:21:47 2 A. That would be fair to say, yes, sir.

11:21:49 3 Q. Who did you speak with next?

11:21:51 4 A. It would have been Deputy Love.

11:21:53 5 Q. Did he come there to meet with you with a written  
11:21:57 6 statement prepared?

11:21:59 7 A. Yes, sir.

11:22:02 8 Q. Was the majority of his interview simply read from a  
11:22:07 9 written statement?

11:22:08 10 A. He did read from a written statement during the  
11:22:10 11 interview, yes.

11:22:11 12 Q. Do you recall how long your interview into the shooting  
11:22:16 13 death of Philip Rhoades with the defendant lasted?

11:22:20 14 A. Approximately 35 to 40 minutes.

11:22:28 15 Q. The actual recorded interview of the defendant, are you  
11:22:33 16 saying that you interviewed him for longer than what you  
11:22:37 17 recorded?

11:22:38 18 A. No, sir.

11:22:38 19 Q. So if that recording was only 11 minutes, and not  
11:22:44 20 35 minutes, that would be different than your testimony right  
11:22:47 21 now, correct?

11:22:48 22 A. I don't have a record of how long the actual interview  
11:22:52 23 lasted, so I'm not really sure exactly what the total time  
11:22:56 24 was.

11:22:56 25 Q. Okay. And if I told you that you only talked to Corey

11:23:05 1 Love for nine minutes, do you have any reason to disagree with  
11:23:07 2 me?

11:23:08 3 A. I can't agree or disagree as I just previously stated, I  
11:23:11 4 do not know exactly what the total time was. I don't have any  
11:23:15 5 recollection of that.

11:23:15 6 Q. Okay. Typically when you're investigating a homicide, do  
11:23:22 7 you normally only speak to the shooter for 11 minutes?

11:23:25 8 A. I would say no, sir.

11:23:26 9 Q. And typically when you're interviewing the only other  
11:23:29 10 person on scene to a homicide, do you only interview them for  
11:23:34 11 nine minutes?

11:23:34 12 A. I would say no.

11:23:36 13 Q. And you testified earlier you're supposed to investigate  
11:23:39 14 this as a homicide, correct?

11:23:40 15 A. Investigating a crime, yes, sir, a shooting.

11:23:43 16 Q. I want to talk to you a little bit about the statements  
11:23:48 17 that they made to you.

11:23:53 18 MR. UMINA: May we go back to the PowerPoint, please?

11:23:56 19 Q. Sergeant Branham, I'd like to refer to Plaintiff's  
11:24:26 20 Exhibit No. 9. Would you agree with me that this is the  
11:24:37 21 approximate location that Corey Love told you that the vehicle  
11:24:43 22 was in when he entered the gas well site. Do you recall that?

11:24:47 23 A. I don't recall the exact location. That is an accurate  
11:24:51 24 depiction of what it looked like when I arrived on scene from  
11:25:00 25 the photograph.

11:25:02 1 Q. Do you recall Corey Love telling you when they pulled in  
11:25:10 2 the gas well site that the Jeep was sitting a few feet back  
11:25:15 3 from the left?

11:25:16 4 A. I don't recall exact wording what was stated, no, sir.

11:25:18 5 Q. Would you state that is accurate based on your  
11:25:21 6 recollection, that they told you it was sitting off to the  
11:25:24 7 left?

11:25:25 8 A. That could be accurate, yes, sir.

11:25:26 9 Q. Okay. I'd like to speak with you now about what the  
11:25:36 10 defendant told you as opposed to what Corey Love told you  
11:25:40 11 during their interviews, the differences. And I'd also like  
11:25:46 12 to speak with you about some of the questions that you asked  
11:25:50 13 or didn't ask to the defendant.

11:25:54 14 Turning onto gas well road, did you ever ask the  
11:25:56 15 defendant how fast he traveled up the road to the clearing?

11:26:00 16 A. I don't recall that, sir.

11:26:02 17 Q. Did you ever ask him how long it took him after he got to  
11:26:08 18 the clearing, to get out of the cruiser?

11:26:10 19 A. I don't recall what was said.

11:26:13 20 Q. If the defendant told you that when he first got to the  
11:26:16 21 clearing, the Jeep Wrangler was marked and then pulled towards  
11:26:21 22 him, almost hitting the cruiser, before backing up, did you  
11:26:23 23 ever question him as to why there were no tire tracks in the  
11:26:27 24 grass indicating that occurred?

11:26:28 25 A. I don't recall anything to that extent, sir.

11:26:31 1 Q. If the defendant indicated that he got out of his cruiser  
11:26:35 2 and the Jeep Wrangler was attempting to do a three-point turn,  
11:26:40 3 did the defendant ever tell you how the Jeep was performing  
11:26:44 4 this three-point turn, or the details of that?  
11:26:46 5 A. I don't recall that, no, sir.  
11:26:47 6 Q. Did the defendant ever tell you where exactly the Jeep  
11:26:51 7 was performing this supposed three-point turn at?  
11:26:53 8 A. I don't recall that.  
11:26:55 9 Q. Okay. Do you recall Corey Love giving you a completely  
11:26:58 10 different statement about what the Jeep was doing when you  
11:27:00 11 pulled into the -- when they pulled into the gas well site and  
11:27:03 12 made no mention of the three-point turn?  
11:27:05 13 A. No, sir, not to my recollection, without referencing the  
11:27:08 14 statements.  
11:27:09 15 Q. I'd like to -- let me reference the PowerPoint. I'd like  
11:27:27 16 to refer \*\* to you Exhibit No. 19. The defendant told you  
11:27:41 17 that after attempting a three-point turn and after the  
11:27:44 18 defendant supposedly repeatedly made commands telling him to  
11:27:50 19 stop, show his hands, several times, that the engine started  
11:27:54 20 revving, tires spun, and the Jeep came at him in an aggressive  
11:27:59 21 manner. But when we look at this photograph, there is no  
11:28:03 22 evidence of tires spinning in this photograph, is there?  
11:28:07 23 A. On this photograph I cannot see any, no, sir.  
11:28:10 24 Q. Okay. And do you recall from the previous photographs  
11:28:16 25 that the conditions were wet and muddy that day?



11:28:18 1 A. It was wet and muddy in the area where I took those tire  
11:28:22 2 impressions that was on the entrance road, there was a puddle  
11:28:25 3 there, yes, sir.

11:28:25 4 Q. Which was just feet from where this Jeep was, that's  
11:28:28 5 fair, right?

11:28:29 6 A. I don't recall the exact measurement, but it was off the  
11:28:32 7 entrance to the site.

11:28:34 8 Q. You didn't take that measurement, did you?

11:28:36 9 A. No, I did not take measurement of that.

11:28:38 10 Q. Again, what kind of transmission did that Jeep Wrangler  
11:28:38 11 have?

11:28:47 12 A. It was a standard.

11:28:49 13 Q. As the investigator, were you aware that the shot that  
11:28:54 14 struck Philip essentially instantly paralyzed him from his  
11:28:59 15 neck down, so that he couldn't hit the brake or the clutch or  
11:29:05 16 do anything with his arms?

11:29:06 17 A. No, sir, I did not know that at the time.

11:29:09 18 Q. You did attend the autopsy though, correct?

11:29:12 19 A. That's correct.

11:29:12 20 Q. Okay. And you know that his C1 was shattered by the  
11:29:17 21 bullet?

11:29:17 22 A. That sounds correct, yes, sir.

11:29:19 23 Q. Okay. We know that shooting a rapidly moving vehicle  
11:29:36 24 doesn't stop the vehicle, is that a safe statement?

11:29:40 25 A. Like I said, depends on what type of vehicle and where

11:29:44 1 it's being hit at. I would say that is a fairly safe  
11:29:47 2 statement, yes, sir.

11:29:47 3 Q. And shooting the windshield doesn't stop a rapidly  
11:29:53 4 accelerating vehicle?

11:29:53 5 A. No, sir.

11:29:54 6 Q. And if a vehicle is in gear rapidly accelerating, does  
11:30:00 7 shooting the driver somehow magically cause it to stop in its  
11:30:05 8 tracks?

11:30:06 9 A. I would not say that it would magically cause it to stop.

11:30:10 10 Q. Question for you: Can you please explain to the jury how  
11:30:27 11 a Jeep with a manual transmission could be in gear and running  
11:30:36 12 for approximately 52 minutes with no one in it to push on the  
11:30:44 13 gas or on the clutch?

11:30:47 14 A. No, sir, I can't. I've never driven a standard.

11:30:53 15 Q. So, again, you're not aware how the supposed weapon in a  
11:31:05 16 homicide actually operates?

11:31:08 17 A. I've never operated standard, like I said, sir.

11:31:11 18 Q. Okay. Have you since learned that it is impossible for a  
11:31:17 19 standard transmission vehicle to be running and in gear for 52  
11:31:24 20 minutes with no one to push on the gas or clutch?

11:31:27 21 A. Yes, sir.

11:31:28 22 Q. Thank you, Sergeant Branham.

11:31:29 23 MR. UMINA: I have no further questions, Your Honor.

11:31:31 24 THE COURT: Thank you very much, Mr. Umina. Ms.

11:31:35 25 Durst.

11:31:35 1 MS. DURST: Thank you, Your Honor.

11:31:38 2 THE COURT: I will give everybody fair warning, we  
11:31:42 3 will stop probably at some point during your examination for  
11:31:46 4 lunch, but we might as well get started.

11:31:48 5 MS. DURST: That's fine Your Honor.

11:31:51 6 CROSS-EXAMINATION

11:31:51 7 BY MS. DURST:

11:32:15 8 Q. Good morning, Lieutenant Branham.

11:32:17 9 A. Good morning.

11:32:17 10 Q. Just to follow up on a couple of things that Mr. Umina  
11:32:21 11 had started off with you. He asked you about any training you  
11:32:25 12 had received specifically with regard to investigating a  
11:32:29 13 shooting like this. Do you recall that?

11:32:31 14 A. Yes.

11:32:31 15 Q. Okay. He's also asked you questions about whether you  
11:32:35 16 treated this as a homicide; is that right?

11:32:37 17 A. That's correct.

11:32:38 18 Q. Would there have been any additional training that you  
11:32:40 19 would have needed or received aside from the training received  
11:32:43 20 at the state police academy to investigate this incident?

11:32:47 21 A. No, ma'am. I mean, there are some specialized trainings,  
11:32:51 22 different places, I've never went to any of them.

11:32:54 23 Q. Was this -- this was not the first incident you had  
11:32:58 24 investigated involving an officer-involved shooting, was it?

11:33:01 25 A. No.

Q. We've talked a little bit about and I think the assumption is there, but as a result of your investigation into the August 2, 2017, incident, did you complete a written report?

A. Yes, ma'am.

Q. Okay. And did that report reflect the information that you obtained as part of your investigation?

A. Yes, ma'am.

Q. Did the report reflect information you obtained from the witness statements that were taken?

A. Yes.

Q. That report, did it also include the photographs that you took at the scene?

A. Yes, it did.

Q. And we've seen some of those. We'll talk a little bit more about some other photos in a minute.

Do you still have a copy of your report there in front of you, Lieutenant Branham?

A. Yes, ma'am.

Q. Okay. Are you able to tell the jury the date that your report was finalized?

A. It appears that the date of -- my date of report was August 14, 2017.

Q. By the time you had completed your report on August the 14th of 2017, did you believe that you had obtained -- had

11:34:19 1 obtained the evidence that you needed, contacted all the folks  
11:34:24 2 that you needed to speak with in order to complete your  
11:34:27 3 report?

11:34:28 4 A. Yes. At that time when I submitted this initial report,  
11:34:32 5 yes, I believe I did.

11:34:33 6 Q. And as a result of your investigation, did you find any  
11:34:38 7 evidence that Mr. Rhoades was not driving the Jeep at Deputy  
11:34:44 8 Forsyth the way he had recounted it to you?

11:34:46 9 A. No.

11:34:47 10 Q. If you would have, would you have noted that in your  
11:34:52 11 report?

11:34:52 12 A. Yes.

11:34:53 13 Q. Now, you have your report there, you said, in front of  
11:34:57 14 you, correct?

11:34:58 15 A. Yes, ma'am.

11:34:58 16 Q. Can you explain to the jury, I think you told us at that  
11:35:02 17 time you were the detachment commander?

11:35:07 18 A. That's correct.

11:35:07 19 Q. Did you have a supervisor?

11:35:10 20 A. At that time my supervisor would have been a district  
11:35:13 21 commander.

11:35:14 22 Q. When you complete a report such as the one you completed  
11:35:17 23 as a result of this investigation, do you have to submit your  
11:35:23 24 report to your district commander?

11:35:26 25 A. Yes. Any major incidents or reports they review the

11:35:30 1 report.

11:35:30 2 Q. If you submit your report to the district commander, who  
11:35:36 3 is your supervisor, and that commander determines there's  
11:35:42 4 something else that you needed to do as part of your  
11:35:44 5 investigation, is that conveyed to you?

11:35:47 6 A. Yes, it is.

11:35:48 7 Q. How is that conveyed to you?

11:35:51 8 A. That is conveyed with, it could be a sit-down talk and  
11:35:55 9 notes, and then report back saying this, whatever follow-up  
11:35:58 10 needs conducted and then we would actually either do a whole  
11:36:03 11 report or actually a supplemental report to supplement that  
11:36:06 12 information.

11:36:07 13 Q. In this case, did your district commander advise you of  
11:36:13 14 any follow-up needed for this investigation?

11:36:16 15 A. No.

11:36:17 16 Q. There is a section in your report -- excuse me,  
11:36:33 17 Lieutenant Branham, that says additional victim information  
11:36:36 18 and lists assault on LEO. Can you tell the jury what LEO  
11:36:41 19 means?

11:36:42 20 A. LEO stands for law enforcement officer.

11:36:44 21 Q. Okay. Where did the information come from for assault on  
11:36:48 22 a law enforcement officer?

11:36:50 23 A. Based upon what I had in the investigation.

11:36:53 24 Q. What would that have included?

11:36:55 25 A. The vehicle travelling towards an officer.

11:36:58 1 Q. And where did you get that information?

11:37:01 2 A. That information came from statements from the officers

11:37:06 3 involved.

11:37:06 4 Q. Now, is there a section in the report also then that says

11:37:08 5 type of weapon used?

11:37:09 6 A. Yes.

11:37:10 7 Q. And in this case what does your report indicate?

11:37:13 8 A. I'm not sure exactly what section you're referring to.

11:37:21 9 Q. I believe it's on -- let me ask it this way. Do you

11:37:27 10 recall noting in your report that motor vehicle was listed as

11:37:30 11 the potential weapon?

11:37:32 12 A. That is correct. I actually see that section now.

11:37:34 13 Q. Okay. Where did the reference come from to a motor

11:37:40 14 vehicle as being the weapon used?

11:37:43 15 A. Based upon the statements of the officers.

11:37:45 16 Q. Are you able to tell the jury, either from your

11:37:49 17 recollection or from refreshing your recollection from your

11:37:53 18 report, what facts you were actually able to determine from

11:37:59 19 your investigation?

11:38:00 20 A. That there was a pursuit, the pursuit had continued into

11:38:05 21 this gas well site. The two officers involved entered the gas

11:38:10 22 well site. Deputy Forsyth had exited his vehicle, gave

11:38:16 23 commands to the driver of this Jeep. The driver failed to

11:38:21 24 obey by his commands, started driving towards him in an

11:38:25 25 aggressive manner, and traveling towards him in an aggressive

11:38:27 1 manner and shots were fired.

11:38:28 2 Q. And where did that information, again, come from?

11:38:32 3 A. That information came from evidence I saw at the scene  
11:38:37 4 and statements.

11:38:38 5 Q. And we talked a little bit about the statements that  
11:38:44 6 Deputy Forsyth and Deputy Love provided to you. Did you  
11:38:50 7 permit them to provide statements together?

11:38:54 8 A. No.

11:38:54 9 Q. I wanted to ask you something as well. Mr. Umina had  
11:39:01 10 asked you about gunshot residue tests.

11:39:04 11 Do you recall those questions?

11:39:05 12 A. Yes.

11:39:05 13 Q. As a result of your investigation, was there any dispute,  
11:39:13 14 question, or any concern in your mind that Deputy Forsyth was  
11:39:17 15 the one that actually discharged his weapon?

11:39:20 16 A. No, there was not.

11:39:21 17 Q. Your report also indicates that Deputy Love told you that  
11:39:41 18 he had exited the vehicle and remained close by as a covering  
11:39:45 19 unit.

11:39:45 20 Do you recall that generally?

11:39:47 21 A. Yes.

11:39:48 22 Q. Where did you get that information?

11:39:51 23 A. That was based off the statements.

11:39:54 24 Q. And if I can probably direct you to, I think it's page 1  
11:40:00 25 of your report, that -- in the narrative section, Lieutenant



11:40:05 1 Branham. And at the top where it says "mode of operation" in  
11:40:11 2 the very first paragraph, do you see that?  
11:40:14 3 A. Yes, ma'am.  
11:40:14 4 Q. Okay. So we just looked at around the bottom where it  
11:40:17 5 says, "Deputy Love had also exited the vehicle and remained  
11:40:21 6 close by as a covering unit."  
11:40:23 7 Do you see that?  
11:40:24 8 A. Yes.  
11:40:24 9 Q. Okay. And then the report continues on. Can you read  
11:40:30 10 the last two sentences from that mode of operation to the  
11:40:34 11 jury, please?  
11:40:35 12 A. The report states: "Philip Rhoades failed to comply with  
11:40:38 13 the orders given by Deputy Forsyth, and the vehicle began to  
11:40:42 14 move in an aggressive manner towards Deputy Forsyth. At that  
11:40:46 15 time Deputy Forsyth fired his service weapon striking and  
11:40:51 16 killing Philip Rhoades."  
11:40:52 17 Q. And, again, that information you prepared in your report  
11:40:57 18 that was completed August the 14th; is that right?  
11:41:00 19 A. That's correct.  
11:41:00 20 Q. Where did that information come from?  
11:41:04 21 A. That information came from the totality of the evidence  
11:41:06 22 that I had including the statements.  
11:41:10 23 Q. Just to be clear, what time, and if you can for my  
11:41:16 24 benefit, not tell me in military time, tell me what time you  
11:41:21 25 were actually contacted and what time you arrived on scene?

11:41:25 1 A. I was called at 3:02 p.m., I arrived on scene at  
11:41:30 2 3:32 p.m.  
11:41:32 3 Q. Okay. And how were you contacted again?  
11:41:36 4 A. I was contacted by the 911 center in Marion County by the  
11:41:40 5 request of the sheriff.  
11:41:41 6 Q. Of the sheriff for?  
11:41:44 7 A. Sheriff of Marion County.  
11:41:45 8 Q. Okay. After you were contacted through the 911 center to  
11:41:49 9 conduct the investigation, did anyone from the Marion County  
11:41:55 10 Sheriff's Department attempt to interfere or impede your  
11:41:58 11 investigation in any manner?  
11:41:59 12 A. No, ma'am.  
11:42:00 13 Q. I don't know that we've -- we've talked about some of the  
11:42:06 14 photographs. But can you tell the jury what you saw when you  
11:42:11 15 arrived on scene?  
11:42:12 16 A. Now, when I arrived on scene to the gas well site, I  
11:42:18 17 started taking the photographs. I observed the cruiser that I  
11:42:21 18 could see first. I entered the gas well site, I observed the  
11:42:25 19 Jeep with some bullet hole damage. I observed some blood on  
11:42:29 20 the ground in-between both of the vehicles. There appeared  
11:42:32 21 there was some medical assistance provided.  
11:42:38 22 Q. In one of the photos I think you had looked at, you  
11:42:42 23 indicated that there might have been maybe a sheriff's deputy  
11:42:44 24 or some deputies still from the sheriff's department on scene?  
11:42:47 25 A. That's correct.

11:42:48 1 Q. Okay. When you arrived, had EMS left or were they still  
11:42:53 2 there?  
11:42:53 3 A. I believe EMS had already departed from the scene.  
11:42:57 4 Q. Okay. So if -- when you got on scene, do you have any  
11:43:00 5 recollection of how many members from the sheriff's department  
11:43:03 6 may have been there?  
11:43:05 7 A. Approximately two to three.  
11:43:06 8 Q. Okay. Did any of those officers do anything to interfere  
11:43:10 9 with your investigation?  
11:43:12 10 A. No.  
11:43:12 11 Q. And safe to say, we know when you got on scene the  
11:43:19 12 cruiser was still there and the Jeep was still there?  
11:43:21 13 A. That's correct.  
11:43:22 14 Q. Okay. And we talked about the photographs that you took  
11:43:25 15 and I think -- how did you take those photographs?  
11:43:28 16 A. With a digital camera.  
11:43:30 17 Q. Okay. Now, Mr. Umina had gone over some photographs with  
11:43:39 18 you from your report. I want to go over some additional ones  
11:43:44 19 with you. Some of these may be some of the same, but they  
11:43:49 20 look so close.  
11:43:50 21 MS. DURST: Your Honor, may I approach?  
11:43:51 22 THE COURT: You may.  
11:43:59 23 MR. UMINA: I will stipulate to the admission of  
11:44:01 24 these.  
11:44:02 25 THE COURT: Okay. Understood. Mark first so we can

1 keep our record as clean as possible.

2 MS. DURST: And, Your Honor, if I might, these were  
3 part of under defendant's tab number 7 in our exhibit  
4 notebook, but obviously that entirety of the document will not  
5 be admitted. We are going to use select photos.

6 THE COURT: Understood.

7 MS. DURST: Your Honor, may I approach?

8 THE COURT: You may. If you would mind telling me  
9 what you have marked that as, please.

10 MS. DURST: Defendant's Exhibit No. 1, Your Honor.  
11 And for the record, there are 30 photographs that are  
12 comprised of Number 1.

13 THE COURT: Understood. Thank you.

14 MS. DURST: Your Honor, with the stipulation to the  
15 admissibility, can we publish these to the jury?

16 THE COURT: Mr. Umina, you have had a chance to  
17 review all the photographs?

18 MR. UMINA: Yes, Your Honor.

19 THE COURT: And no objection?

20 MR. UMINA: None, Your Honor.

21 THE COURT: Defendant's Exhibit 1, which consists of  
22 30 -- a collection of 30 photographs is hereby admitted and  
23 you may publish as you deem appropriate.

24 MS. DURST: Thank you, Your Honor.

25 BY MS. DURST:

11:45:30 1 Q. Lieutenant Branham we are going to go ahead and walk  
11:45:32 2 through some of the photographs. If you would do me just a  
11:45:33 3 favor, first, and just confirm for me that these  
11:45:38 4 photographs -- there is 30 of them there -- they were  
11:45:41 5 photographs that you took at the scene.

11:45:45 6 A. Yes, ma'am, they appear to be ones I took at the scene.

11:45:48 7 Q. And some of these photographs are some of the same ones  
11:45:51 8 that you had gone over with Mr. Umina, correct?

11:45:53 9 A. That's correct.

11:45:54 10 Q. Do you see some photographs near the end that are ones  
11:45:59 11 that were not discussed with Mr. Umina?

11:46:01 12 A. Yes.

11:46:02 13 Q. Okay. And for the record, Lieutenant Branham, I have, to  
11:46:07 14 make it easier for reference, I have written a little number  
11:46:11 15 on the bottom right-hand corner that says 1 through 30, okay?  
11:46:15 16 So if we're referring to a photograph for my co-counsel here,  
11:46:19 17 if you could just tell me which number you're referring to  
11:46:22 18 that he can pull that up on the screen, okay?

11:46:25 19 A. Yes, ma'am.

11:46:25 20 Q. Okay. Now, you went over with Mr. Umina some of the  
11:46:30 21 photographs that you were discussing. Remember the pipe that  
11:46:36 22 was sticking up in the ground?

11:46:37 23 A. Yes.

11:46:38 24 Q. Can you flip to number 27? Do you see that photograph,  
11:46:49 25 Lieutenant Branham?

11:46:49 1 A. Yes, ma'am.

11:47:07 2 MS. DURST: Your Honor, the resolution on that screen  
11:47:09 3 is a little bit bright, can we inquire of the jurors if they  
11:47:13 4 can see? My view on the screen is much different than that.

11:47:17 5 THE COURT: We can dim the lights a little bit.

11:47:20 6 MS. DURST: Okay.

11:47:21 7 THE COURT: See if that helps.

11:47:23 8 MS. DURST: It helps a bit, Your Honor.

11:47:25 9 THE COURT: Can everyone see that exhibit okay on  
11:47:27 10 monitors in the box? I'm seeing unanimous head shakes, so you  
11:47:32 11 may proceed, Ms. Durst.

11:47:32 12 MS. DURST: Thank you, Your Honor.

11:47:33 13 BY MS. DURST:

11:47:34 14 Q. Lieutenant Branham, are you able to see the pipe that you  
11:47:36 15 were discussing with Mr. Umina on photograph number 27 of  
11:47:39 16 Defendant's Exhibit No. 1?

11:47:40 17 A. Yes.

11:47:41 18 Q. Okay. Would you agree that that pipe is not directly  
11:47:45 19 behind the Jeep?

11:47:47 20 A. No, it's to the left of the Jeep if you're looking at the  
11:47:49 21 rear of the Jeep.

11:47:50 22 Q. Okay. And Mr. Umina had shown you a photograph, and it  
11:47:58 23 was Exhibit -- Plaintiff's Exhibit No. 19, and asked you if  
11:48:01 24 you had seen any evidence of tire spinning or anything like  
11:48:04 25 that. You said not in that photograph, you couldn't see any

11:48:08 1 tracks. Do you recall that?

11:48:09 2 A. Yes, ma'am.

11:48:09 3 Q. Are you able to look through these photographs, for  
11:48:12 4 instance if you look at Plaintiff's Number -- or excuse me,  
11:48:14 5 Defendant's Number 25. Are you able to see any evidence that  
11:48:23 6 appears that the Jeep may have been in a location different  
11:48:27 7 than where it was when you arrived?

11:48:30 8 A. It's kind of hard to tell from this photograph. It  
11:48:33 9 appears that there's some tire tracks that correspond with  
11:48:37 10 that vehicle in that photograph.

11:48:39 11 Q. Can you describe for the jury where those tire tracks  
11:48:43 12 appear to be?

11:48:44 13 A. To the rear of the Jeep.

11:48:46 14 Q. If there were tire tracks from the rear of the Jeep when  
11:48:53 15 you arrived, would you have any information as to any other  
11:48:57 16 vehicle making those tire tracks?

11:49:00 17 A. No, ma'am.

11:49:00 18 Q. Are you able to look at, if you would -- let me get the  
11:49:06 19 number -- Defendant's 26. Are you able to see generally the  
11:49:13 20 same tire tracks in that photograph?

11:49:17 21 A. Somewhat, yes, ma'am. There are disturbances within the  
11:49:21 22 brush there.

11:49:22 23 Q. Okay. Do me a favor, if you would, and just to be clear  
11:49:26 24 for Lieutenant Branham, these are not photographs that  
11:49:27 25 Mr. Umina had gone over with you, correct?

11:49:30 1 A. I don't recall these, no, ma'am.

11:49:32 2 Q. Would you look at photograph number 30? Do you have

11:49:46 3 photograph number 30, Lieutenant Branham?

11:49:47 4 A. Yes, ma'am.

11:49:47 5 Q. What do you believe number 30 shows?

11:49:50 6 A. Number 30, if you look towards the left portion of that

11:49:54 7 photograph, there is a disturbance in what appears to be dirt

11:49:57 8 in the vegetation area.

11:49:59 9 Q. And was this in the area that would have been behind the

11:50:01 10 Jeep?

11:50:02 11 A. Yes, ma'am.

11:50:03 12 Q. So do you believe, Lieutenant Branham, based on the

11:50:08 13 photographs that you documented on the day of your

11:50:11 14 investigation that there was evidence of the Jeep being in a

11:50:17 15 position different than it was when you arrived?

11:50:21 16 A. That's correct.

11:50:22 17 Q. And evidence of what has been referred to, to some

11:50:27 18 extent, ground surface?

11:50:30 19 A. Yes, that's why I took a photo of that.

11:50:34 20 Q. Now, let's talk about the --

11:50:38 21 MS. DURST: Your Honor, if we -- if you would like,

11:50:40 22 we can bring the lights back up at this point.

11:50:43 23 THE COURT: We'll do that.

11:50:44 24 MS. DURST: Thank you.

11:50:46 25 BY MS. DURST:



11:50:48 1 Q. Lieutenant Branham, you talked a bit about the cruiser  
11:50:51 2 and the Jeep, okay? Mr. Umina had shown you some portions  
11:50:57 3 from your report that indicated that the cruiser was running  
11:51:03 4 and in drive?

11:51:04 5 A. That's correct.

11:51:05 6 Q. Did you learn or come to obtain any information as to how  
11:51:10 7 when you arrived on the scene the cruiser may have still been  
11:51:14 8 in drive?

11:51:15 9 A. Based off statements, I believe Deputy Forsyth advised  
11:51:18 10 that he jumped out of the vehicle, I would say in the spur of  
11:51:24 11 the moment, he might not have realized that it was not in  
11:51:28 12 park.

11:51:29 13 Q. So would you -- is it safe to say that the photograph  
11:51:33 14 that you have of the cruiser is not the photograph that would  
11:51:38 15 show where Deputy Forsyth actually exited?

11:51:42 16 A. No, that's where the vehicles came to rest in that area.

11:51:45 17 Q. Okay. You also testified about the Jeep, and I think you  
11:51:51 18 have admitted you've never operated a manual transmission?

11:51:55 19 A. No, ma'am.

11:51:55 20 Q. Okay. And so have you come to learn, Lieutenant Branham,  
11:52:01 21 that a manual transmission cannot set idle in gear if no one  
11:52:07 22 is in it depressing the clutch?

11:52:10 23 A. Yes, ma'am.

11:52:11 24 Q. Okay. Do you know if the Jeep was in gear or not when  
11:52:15 25 you got there?

11:52:16 1 A. No, ma'am, it's just what it appeared to be as.

11:52:22 2 Q. Okay. The photographs that we looked at, the cruiser  
11:52:26 3 door, when Deputy Forsyth's cruiser is open, do you recall  
11:52:29 4 those photos?

11:52:30 5 A. Yes, ma'am.

11:52:30 6 Q. Okay. Is that the way it was when you got there?

11:52:35 7 A. Yes.

11:52:35 8 Q. The Jeep, the door was closed; is that right?

11:52:41 9 A. I believe the Jeep, yes, the Jeep door was closed.

11:52:46 10 Q. Would you agree with me that in order for Mr. Rhoades to  
11:52:50 11 have been removed from the Jeep, the door would have had to  
11:52:54 12 have been open at some point?

11:52:56 13 A. Yes, ma'am.

11:52:56 14 Q. Do you know how the door was closed?

11:52:59 15 A. No, I do not.

11:52:59 16 Q. Do you know who closed it?

11:53:01 17 A. No, I do not.

11:53:02 18 Q. Do you know when it was closed?

11:53:03 19 A. I would say it was at some point after this incident,  
11:53:06 20 after Mr. Rhoades was removed from the vehicle.

11:53:09 21 Q. But don't know at what point in time between when he was  
11:53:12 22 removed and when you arrived on scene?

11:53:14 23 A. No, ma'am, I do not.

11:53:15 24 Q. Okay. Are you aware, Lieutenant Branham, if there was  
11:53:22 25 ever any determination made as to which bullet that was fired

11:53:26 1 by Deputy Forsyth was actually the one that killed

11:53:30 2 Mr. Rhoades?

11:53:31 3 A. No, ma'am.

11:53:32 4 Q. And I think you said you thought that maybe he had fired  
11:53:35 5 seven rounds?

11:53:36 6 A. I believe so, yes.

11:53:37 7 Q. Did you ever make any determination as to whether that  
11:53:42 8 Deputy Forsyth may have started firing as the Jeep came at  
11:53:46 9 him, the Jeep continues to move and then the last bullet is  
11:53:50 10 the one that struck and killed Mr. Rhoades?

11:53:53 11 A. There was seven rounds fired, I was advised the vehicle  
11:53:56 12 was traveling towards him, I can't -- I could not tell you  
11:53:59 13 which one actually struck Mr. Rhoades.

11:54:01 14 Q. And you would agree that there is evidence in these  
11:54:04 15 photographs that you and I have just gone over, that the Jeep  
11:54:06 16 had moved forward at some point in time before you took the  
11:54:10 17 photographs?

11:54:11 18 A. Yes, it appears that way.

11:54:13 19 Q. Now, we've talked about the statements that you took from  
11:54:29 20 Deputy Forsyth and Deputy Love, and you indicated that you had  
11:54:32 21 gone to the hospital and to see about taking a statement; is  
11:54:36 22 that right?

11:54:37 23 A. That's correct.

11:54:38 24 Q. Okay. And you think you told the jury that Deputy  
11:54:41 25 Forsyth had indicated to you that he wished to speak with you

11:54:44 1 at a later time?

11:54:45 2 A. Yes.

11:54:46 3 Q. Did Deputy Forsyth indicate to you that he was going to  
11:54:49 4 refuse to provide any statement to you?

11:54:52 5 A. No, he did not.

11:54:53 6 Q. With regard to Deputy Forsyth's statement, I think you  
11:55:01 7 had discussed with Mr. Umina you thought he may have come with  
11:55:05 8 a, like a written or typed statement?

11:55:08 9 A. Yes.

11:55:08 10 Q. Did the fact that Deputy Forsyth may have come with a  
11:55:14 11 typed statement stop you or impair you in any way from asking  
11:55:19 12 any follow-up questions that you thought you needed to  
11:55:22 13 question him about?

11:55:24 14 A. No.

11:55:24 15 Q. Did you actually ask follow-up questions of Deputy  
11:55:28 16 Forsyth?

11:55:28 17 A. I believe I did, yes.

11:55:29 18 Q. Was there anything that Deputy Forsyth was asked by you  
11:55:36 19 that he refused to answer?

11:55:38 20 A. No, ma'am.

11:55:39 21 Q. And you were also asked questions about treating this as  
11:55:44 22 a homicide investigation, right?

11:55:46 23 A. Yes.

11:55:47 24 Q. Is it frequently -- or are there times where you might be  
11:55:50 25 interviewing someone as part of a homicide investigation, they

11:55:54 1 come with an attorney?

11:55:55 2 A. Yes.

11:55:56 3 Q. Did Deputy Forsyth come and voluntarily give a statement  
11:55:59 4 to you without an attorney?

11:56:01 5 A. Yes, he came voluntarily.

11:56:03 6 Q. How many investigations would you say you've conducted  
11:56:12 7 over your 23 years?

11:56:13 8 A. Hundreds.

11:56:14 9 Q. Do you frequently take statements?

11:56:16 10 A. Yes.

11:56:17 11 Q. As an officer I think probably around -- well, let me ask  
11:56:23 12 this way. In 2017, when you took this statement from  
11:56:26 13 Deputy Forsyth and Deputy Love, how long had you been with the  
11:56:30 14 state police?

11:56:30 15 A. At that time that was --

11:56:30 16 Q. '17?

11:56:35 17 A. '17. I would have been with the state police  
11:56:38 18 approximately 20, 21 years.

11:56:40 19 Q. As an investigating officer with 20 or 21 years of  
11:56:46 20 experience, taking hundreds of statements from witnesses, did  
11:56:49 21 you have any sense that Deputy Forsyth was being less than  
11:56:53 22 truthful or withholding any information from you?

11:56:55 23 A. No.

11:56:55 24 Q. Do you believe deputy -- excuse me, Lieutenant Branham,  
11:57:06 25 that you conducted a thorough interview of Deputy Forsyth to

11:57:11 1 get the information you needed to complete your investigation?

11:57:14 2 A. At the time, yes, or I would have probably had a longer

11:57:19 3 interview with him.

11:57:20 4 Q. Would you have stopped your interview with him if there

11:57:23 5 were questions that still remained in your mind?

11:57:25 6 A. No.

11:57:26 7 Q. The same questions with regard to Deputy Love. Did

11:57:33 8 Deputy Love refuse to answer any questions that you asked of

11:57:37 9 him?

11:57:37 10 A. No, he did not.

11:57:38 11 Q. I think you said he may have come with a written

11:57:42 12 statement as well?

11:57:43 13 A. Yes.

11:57:43 14 Q. Did the fact that he came with a written statement

11:57:47 15 interfere or impair your ability to question him?

11:57:51 16 A. No.

11:57:51 17 Q. Did you ask follow-up questions of Deputy Love as well?

11:57:56 18 A. I believe I did.

11:57:57 19 Q. Did Deputy Love come with or without an attorney?

11:58:04 20 A. He did not have an attorney.

11:58:05 21 Q. In conducting the interviews that you conducted of

11:58:12 22 Deputy Forsyth and Deputy Love, as the investigating officer,

11:58:17 23 did you find what you thought to be any inconsistencies in

11:58:21 24 their statements?

11:58:22 25 A. No.

11:58:23 1 Q. I wanted to ask you a question. We talked about in the  
11:58:43 2 report, you had listed the weapon as a vehicle.

11:58:46 3 Do you recall that?

11:58:46 4 A. Yes.

11:58:47 5 Q. Okay. Did you ask or did Deputy Forsyth tell you whether  
11:58:52 6 he saw Mr. Rhoades with any weapon?

11:58:56 7 A. I believe he stated he did not observe any weapons.

11:58:59 8 Q. Do you recall Deputy Forsyth telling you that he saw  
11:59:03 9 Mr. Rhoades leaning toward the floorboard or the console?

11:59:10 10 A. Leaning towards the console area I believe.

11:59:12 11 Q. You listened -- let me ask this. As part of the  
11:59:21 12 investigation we talked about you took statements, that you  
11:59:24 13 also took photographs. Were there other aspects of your  
11:59:28 14 investigation, such as, did you obtain the radio traffic from  
11:59:32 15 the 911 center?

11:59:34 16 A. Yes, I did.

11:59:34 17 Q. Did you listen to that radio traffic?

11:59:37 18 A. Yes, at some point.

11:59:38 19 Q. Do you recall, Lieutenant Branham, that part of that  
11:59:44 20 radio traffic indicated that Mr. Rhoades may have been armed?

11:59:48 21 A. Yes.

11:59:57 22 THE COURT: Ms. Durst, while you're pausing, not to  
12:00:03 23 interrupt your train of thought, let me ask how much longer  
12:00:06 24 you may have?

12:00:06 25 MS. DURST: Probably not even more than two minutes,

12:00:08 1 Your Honor.

12:00:09 2 THE COURT: All right. Thank you.

12:00:10 3 MS. DURST: No problem, Your Honor. Just kind of  
12:00:12 4 weeding through some of the things that have already been  
12:00:14 5 asked.

12:00:15 6 BY MS. DURST:

12:00:17 7 Q. Leaving aside the issue then we just talked about,  
12:00:19 8 Lieutenant Branham, that Deputy Forsyth told you, "I didn't  
12:00:23 9 see him have a weapon, I saw him reaching toward the console,  
12:00:26 10 but I didn't see a weapon."

12:00:29 11 Okay. Leave aside that information. Was the information  
12:00:30 12 that you obtained during your investigation that the Jeep that  
12:00:36 13 we have seen on these photographs, was moving toward  
12:00:40 14 Deputy Forsyth at the time he fired his weapon?

12:00:43 15 A. Yes, I believe it was moving.

12:00:45 16 Q. Did you obtain any information through your investigation  
12:00:49 17 that Philip Rhoades was stopped in the Jeep at the time  
12:00:53 18 Deputy Forsyth fired his weapon?

12:00:56 19 A. No.

12:00:58 20 MS. DURST: Your Honor, those are all of the  
12:01:00 21 questions I have for Lieutenant Branham.

12:01:03 22 THE COURT: Thank you. Mr. Umina, I assume you have  
12:01:05 23 some redirect, sir?

12:01:06 24 MR. UMINA: I do, Your Honor. I'd actually like to  
12:01:07 25 start with this photograph. Could we please leave this up for



12:01:10 1 a moment?

12:01:11 2 THE COURT: Well, actually what I was planning on  
12:01:13 3 doing was taking a break so the jurors and everyone else can  
12:01:15 4 go to lunch and then pick back up.

12:01:15 5 MR. UMINA: Oh, that's great.

12:01:19 6 THE COURT: How long do you anticipate having, I just  
12:01:21 7 assumed it was --

12:01:22 8 MR. UMINA: Less than ten minutes.

12:01:23 9 THE COURT: I will hold you to that, sir.

12:01:25 10 Ladies and gentlemen, I will police our lunchtime  
12:01:29 11 vigorously. Mr. Umina, you may proceed, thank you.

12:01:31 12 MR. UMINA: I take lunchtime very seriously.

12:01:35 13 THE COURT: I understand.

12:01:36 14 REDIRECT EXAMINATION

12:01:36 15 BY MR. UMINA:

12:01:39 16 Q. Sergeant Branham, the insinuation that was just made is  
12:01:42 17 effectively these are evidence of tires spinning behind the  
12:01:47 18 Jeep prior to it rapidly accelerating at the defendant as he  
12:01:56 19 alleges.

12:01:57 20 A. That's correct.

12:01:58 21 MR. UMINA: Okay. My copy is not numbered.

12:02:04 22 MS. DURST: Oh, I'm sorry.

12:02:05 23 MR. UMINA: Can we have this photograph? I think  
12:02:08 24 it's -- or I can use the other one.

12:02:15 25 (Off the record discussion.)

12:02:37 1 MR. UMINA: Can we go to 25 really quickly, please.

12:02:37 2 BY MR. UMINA:

12:02:41 3 Q. Okay. So when we look at this photo, that to the right  
12:02:50 4 of the Jeep and all back through there, that's a ditch, right,  
12:02:54 5 and then a big hillside starts?

12:02:56 6 A. I would classify it as a ditch, yes.

12:02:58 7 MR. UMINA: And can we go back to number 30, please?

12:03:06 8 Q. Okay. So \*\* these tire marks to have occurred, the Jeep  
12:03:12 9 would have been having to come out of the ditch facing  
12:03:16 10 outward, right? The way -- with the direction that those  
12:03:20 11 tires marks are facing because behind it is a ditch?

12:03:24 12 A. Or to the side of it and maybe steering, I guess it would  
12:03:27 13 be to the left.

12:03:28 14 Q. So he would have had to have turned, you're saying.  
12:03:33 15 You're saying he would have had to spun the tires and then  
12:03:36 16 turned out of the ditch to get into the position of the Jeep's  
12:03:39 17 final resting place?

12:03:39 18 A. This -- this photograph shows what appears to be a  
12:03:42 19 disturbance there. It's kind of hard to tell from this  
12:03:46 20 photograph since it's so close up on where the tire marks  
12:03:49 21 would have went or where this is in relation to the Jeep --

12:03:52 22 Q. My point is that -- not to interrupt you.

12:03:55 23 Back behind here, is a ditch to the right of the \*\* bowl.  
12:04:02 24 So these tire marks are coming in this direction out of the  
12:04:07 25 ditch. And we know over here, this is all brush. This is the

12:04:11 1 point I'm making.

12:04:13 2 So for these tire marks to have been made by the Jeep --

12:04:17 3 MR. UMINA: Can we go back to 25, please?

12:04:23 4 Q. It would have had to have been coming in this direction,  
12:04:27 5 not in this direction, because there is a ditch right here.

12:04:33 6 A. There is a small ditch there, yes, sir.

12:04:36 7 Q. Yes. And from the direction from the tire -- the alleged  
12:04:39 8 tire marks in that photo, that Jeep, if it went straight at  
12:04:43 9 the defendant as he claimed, couldn't have been coming from  
12:04:46 10 there with the direction of those tires, could it?

12:04:49 11 A. I'm not sure if I'm following you on that question. I'm  
12:04:53 12 looking at another -- the actual tire marks coming out, I  
12:04:57 13 don't know if the vehicle -- that mark was made by a vehicle  
12:05:01 14 maybe coming, I guess, parallel with the ditch and turning.

12:05:05 15 Q. Yeah. But it wasn't made -- if that Jeep was back a car  
12:05:11 16 length, it could have been in a ditch, and with the direction  
12:05:14 17 of those facing out from the ditch, those are opposite  
12:05:17 18 directions. The direction of the tire marks are this way, the  
12:05:21 19 Jeep is facing this way.

12:05:22 20 A. Yes.

12:05:23 21 Q. Thank you, Sergeant Branham.

12:05:27 22 Now, you never called, like, the gas well company and  
12:05:30 23 confirmed that they hadn't, like, recently serviced that or  
12:05:33 24 anything, have you?

12:05:33 25 A. No, sir, I did not.

12:05:34 1 Q. Okay. And I mean, we're looking at what's more likely  
12:05:37 2 than not. The tire marks are coming this way, and that oil  
12:05:42 3 and gas equipment is there, that could have likely just been  
12:05:45 4 an oil and gas truck servicing this or anything?

12:05:49 5 A. I'm not sure if it was serviced. That looked like a  
12:05:52 6 fresh disturbance is why I took a picture of it.

12:05:54 7 Q. But in any event, they were coming in this direction, not  
12:05:58 8 in that direction?

12:05:58 9 A. I can't tell you which direction it looks like they're  
12:06:03 10 going from that photo. It looks like it's along with a ditch  
12:06:05 11 almost, parallel with it.

12:06:08 12 MR. UMINA: Can you we go back to 30?

12:06:10 13 Q. The ditch runs this way. The tire, if it is, is coming  
12:06:20 14 this way.

12:06:22 15 A. Okay.

12:06:22 16 Q. In this direction?

12:06:23 17 A. Yes.

12:06:24 18 Q. That's perpendicular to the ditch.

12:06:26 19 A. Yes.

12:06:27 20 Q. Thank you. About four questions for you. She mentioned  
12:06:33 21 assault on a law enforcement officer, okay? That was solely  
12:06:39 22 based upon the statements the pre-prepared written statements  
12:06:43 23 by the defendant and Corey Love, correct?

12:06:47 24 A. It's not solely based on that, and evidence that was at  
12:06:50 25 the scene and with a vehicle involved, yes.

12:06:51 1 Q. Are you familiar with the concept of confirmation bias?

12:06:55 2 A. No, sir.

12:06:56 3 Q. As an investigator you're not aware of what confirmation  
12:06:59 4 bias is?

12:07:00 5 A. No, sir.

12:07:01 6 Q. If I tell you that it is the tendency to see evidence as  
12:07:04 7 a preconceived theory and you attempt to make that evidence  
12:07:07 8 fit that theory, would you have any reason to disagree with  
12:07:09 9 me?

12:07:09 10 A. I couldn't tell you what the definition of that is.

12:07:11 11 Q. Okay. So when you went there and viewed this evidence,  
12:07:14 12 you viewed this evidence through the lens of the story the  
12:07:17 13 defendant told you?

12:07:19 14 A. When I viewed this evidence at the scene, I hadn't talked  
12:07:23 15 to the defendant.

12:07:23 16 Q. When you determined it was assault on an officer?

12:07:25 17 A. When I completed the report, yes, sir.

12:07:27 18 Q. Okay. And that was, again, based on the theory that the  
12:07:30 19 defendant gave you?

12:07:31 20 A. Based on statement.

12:07:32 21 Q. Okay. Now, we just addressed the issue of a weapon and I  
12:07:40 22 really want to address this issue here. It is your  
12:07:45 23 understanding the defendant did not -- he was not armed?

12:07:47 24 A. No, sir, he was not.

12:07:48 25 Q. And the defendant never claimed him being armed as a

12:07:53 1 reason for shooting him. He claimed solely that the Jeep was  
12:07:57 2 moving to you. That's fair, right?

12:07:59 3 A. Yes, sir.

12:07:59 4 Q. It's not anything having to do with him allegedly being  
12:08:03 5 armed?

12:08:03 6 A. No, sir, it is not.

12:08:05 7 Q. Okay. So, again, his sole reason for using force in this  
12:08:10 8 shooting was his claim that the Jeep was rapidly accelerating  
12:08:18 9 towards him?

12:08:18 10 A. The vehicle was traveling towards him, yes, sir.

12:08:21 11 Q. Okay. Now you just said there is no evidence that the  
12:08:25 12 Jeep wasn't doing what the defendant claims, at least when you  
12:08:29 13 looked at it.

12:08:30 14 A. It appeared to be that way, yes, sir.

12:08:32 15 Q. Okay. But we now know it's impossible that the vehicle  
12:08:39 16 was in gear when you arrived.

12:08:43 17 A. Yes, sir, I have learned that after the fact since I  
12:08:46 18 wasn't familiar with the standard, that's what it appeared to  
12:08:49 19 me at that time.

12:08:50 20 Q. So the fact that we have someone who was killed and  
12:08:54 21 immediately when the shot hit them, paralyzed them from the  
12:08:58 22 neck down, couldn't touch anything, meaning he couldn't have  
12:09:02 23 shifted it out of gear, and the fact that we know now that the  
12:09:05 24 Jeep was in neutral, when you arrived, that evidence would  
12:09:10 25 contradict the defendant's story, wouldn't it? The story that

12:09:14 1 it was in gear?

12:09:15 2 A. The story that it was in gear after he was shot?

12:09:18 3 Q. Yes. When he was shot, because he couldn't touch it  
12:09:21 4 after he was shot, and he testified that he didn't touch it  
12:09:24 5 and Corey didn't touch it, and everyone has testified they  
12:09:28 6 didn't touch that gear shift. So no one touched the gear  
12:09:30 7 shift. The person who was killed couldn't have done anything  
12:09:33 8 to the gear shifter and it wasn't in gear when you arrived  
12:09:36 9 45 minutes later, that would contradict the fact that the Jeep  
12:09:41 10 was in gear, which is what he claims. That's fair, right?

12:09:44 11 A. Yes, sir.

12:09:44 12 Q. Okay. And you would agree if the Jeep wasn't in gear  
12:09:48 13 then he's liable for the death.

12:09:54 14 A. If the Jeep wasn't -- I can't -- if the Jeep, if it was  
12:09:56 15 not in gear afterwards, I can't tell whether the Jeep was in  
12:09:59 16 gear during this incident.

12:10:01 17 Q. If it wasn't in gear when he shot him, he's lying,  
12:10:04 18 though, isn't it?

12:10:05 19 A. If it was not in gear?

12:10:06 20 Q. Yes.

12:10:07 21 A. I'm not going to make a legal determination of whether he  
12:10:10 22 is liable or not. I would say that the vehicle wouldn't be  
12:10:12 23 traveling if it wasn't in gear, it wouldn't have traveled  
12:10:15 24 towards \*\* in.

12:10:15 25 Q. And so his justification would be false?

12:10:17 1 A. I would say so.

12:10:19 2 Q. Thank you, Sergeant Branham -- I mean, Lieutenant, I  
12:10:21 3 apologize, no further questions.

12:10:24 4 THE COURT: Thank you, Mr. Umina.

12:10:25 5 Ms. Durst, any recross?

12:10:27 6 MS. DURST: I think just a couple, Your Honor, I'll  
12:10:28 7 make it brief.

12:10:30 8 RECCROSS-EXAMINATION

12:10:30 9 BY MS. DURST:

12:10:31 10 Q. Lieutenant Branham, Mr. Umina asked you about  
12:10:34 11 confirmation bias and asked you some questions about how you  
12:10:38 12 decide when you go in and do an investigation. Did you  
12:10:40 13 conduct a biased investigation?

12:10:42 14 A. No, ma'am.

12:10:42 15 Q. Do you believe you conducted a thorough investigation  
12:10:46 16 into this incident?

12:10:47 17 A. Yes.

12:10:48 18 Q. We talked about that you submit your report to the  
12:10:53 19 district commander, and then the commander signs off on it,  
12:10:56 20 right?

12:10:57 21 A. That's correct.

12:10:57 22 Q. Okay. After you complete your report, and at some point  
12:11:03 23 in this case, I believe -- we took your deposition in this  
12:11:10 24 case July 11 of 2019, does that sound about right?

12:11:13 25 A. That's correct.



1 Q. And around that time there were questions asked of you  
2 during that deposition about the Jeep being in gear versus  
3 being in neutral. Do you remember those questions generally  
4 during your deposition?

5 A. Yes, ma'am.

6 Q. Since that time, have you made any revisions or changes  
7 to the August 14th, 2017, report that you prepared?

8 A. No, I have not.

9 Q. Mr. Umina was also asking you questions about whether if  
10 the Jeep was in gear or if it was in neutral, if it was in  
11 neutral then Deputy Forsyth couldn't have -- it couldn't have  
12 happened the way Deputy Forsyth said.

13 Do you recall that just generally?

14 A. Yes.

15 Q. Okay. Do you know what may have happened inside the Jeep  
16 with Mr. Rhoades before a bullet lacerated his neck?

17 A. No, I do not.

18 Q. Don't know whether he was in the middle of shifting gears  
19 as he was revving the engine toward Deputy Forsyth?

20 A. I do not.

21 MS. DURST: Those are all the questions I have,  
22 Lieutenant Branham.

23 THE COURT: Thank you, Ms. Durst.

24 Mr. Umina, anything further from Lieutenant Branham, sir?

25 MR. UMINA: No, Your Honor, nothing further.

12:12:23 1 THE COURT: Understood. Ladies and gentlemen, we've  
12:12:25 2 reached a point in our proceedings today where we are going to  
12:12:28 3 take a lunch break, sneaking up on 12:15. If I could ask you  
12:12:33 4 to be back here at 1:15 ready to proceed. We'll be ready to  
12:12:38 5 hear from our next witness at that point in time.

12:12:41 6 Of course, my prior instructions still stand. Please  
12:12:44 7 refrain from discussing this case with anyone including any of  
12:12:47 8 your fellow jurors at this point in time, and any non-jurors  
12:12:53 9 of course. Also, please continue to refrain from any  
12:12:56 10 independent investigation efforts about this case or about any  
12:12:59 11 issues we've discussed so far in this case.

12:13:01 12 At this point, we thank you for your time and attention  
12:13:05 13 this morning and we'll see you back here at 1:15. Thank you  
12:13:09 14 all very much.

12:13:10 15 (Jury excused.)

12:13:35 16 THE COURT: You called Lieutenant Branham. May he be  
12:13:38 17 excused? I'll throw that question to everybody.

12:13:40 18 MR. UMINA: He may be excused.

12:13:42 19 MS. DURST: Your Honor, we had him subpoenaed for  
12:13:43 20 today and tomorrow, not knowing, he can be released from our  
12:13:46 21 subpoena.

12:13:46 22 THE COURT: All right. So he's not subject to  
12:13:48 23 recall. Thank you for being here today, you're free to go,  
12:13:50 24 sir.

12:13:52 25 THE WITNESS: Yes, sir. Thank you.

12:13:54 1 THE COURT: Thank you. Anything we need to take up  
12:13:55 2 at this point in time, Counsel?

12:13:57 3 MR. UMINA: Just lunch, Your Honor.

12:13:59 4 MS. DURST: No, Your Honor.

12:14:00 5 THE COURT: All right. Who will be our next witness,  
12:14:02 6 Mr. Umina?

12:14:03 7 MR. UMINA: It will be Dr. Savasman.

12:14:05 8 THE COURT: All right. If I could ask you to let him  
12:14:07 9 know of that fact and we'll start at 1:15. Thank you all very  
12:14:11 10 much.

01:17:53 11 (Lunch break taken at 12:14 p.m. until 1:17 p.m.)

01:17:53 12 THE COURT: Mr. Umina, anything we need to take up  
01:17:55 13 before we call jury back?

01:17:57 14 MR. UMINA: Your Honor, just briefly before they come  
01:18:00 15 back. We are stipulating to the use of certain radio  
01:18:10 16 transmissions.

01:18:10 17 THE COURT: Yes.

01:18:12 18 MR. UMINA: Defendant Forsyth will be the witness  
01:18:15 19 after the medical examiner who we're about to call. So we're  
01:18:20 20 not going to require them to lay a foundation or anything,  
01:18:22 21 they can utilize that during their cross-examination.

01:18:25 22 THE COURT: All right. Thank you for the heads up.

01:18:27 23 MS. DURST: Yes, Your Honor, and we discussed subject  
01:18:29 24 to the objection that the Court ruled on with regard to that  
01:18:31 25 one clip, everything else would revert to anyway, we wanted to

bringing that to the Court's attention.

MR. UMINA: I'm sorry. And this just came up, but one of our witnesses, Rick Rhoades, he normally wears a hearing aid, well, we just found out that he's now having an issue with one of those hearing aids. He will -- we have a few things to do before that, and I'm guessing we'll certainly get that afternoon break, so we may need a moment to test out -- I'm assuming the Court has something for audio?

THE COURT: We do. We absolutely do.

MR. UMINA: And to try and test that, because he literally just had an issue with one of his hearing aids.

THE COURT: That's fine. We'll use our afternoon break to test that regardless of where we are in terms of witness order.

Ms. Durst, what exhibit number is the stipulated to audio recording?

MS. DURST: It will be Defendant's Exhibit No. 2, Your Honor. And if you give me one second I can tell you. It would have been included in our exhibit binder on the disk that we had provided that -- I think it's from Exhibit Number -- it would have been under tab 6, but we would have provided a disk. So obviously it's only portions now of the August 2nd radio traffic.

THE COURT: Understood. But for our record here, it's Defendant's 2.

01:19:53 1 MS. DURST: Yes, Your Honor. And Madam Clerk had  
01:19:56 2 advised me, we have it saved on Mr. Carroll's computer, but  
01:19:59 3 she said as long as we get her a flash drive that we can mark  
01:20:02 4 as Exhibit No. 2 before we conclude the trial. We will make  
01:20:06 5 sure that we do that.

01:20:07 6 THE COURT: Understood, and I thank you very much.  
01:20:10 7 Thank you.

01:20:10 8 Anything else, Mr. Umina?

01:20:13 9 MR. UMINA: Not at this time.

01:20:14 10 THE COURT: Okay. Ms. Durst, anything further?

01:20:16 11 MS. DURST: No, Your Honor.

01:20:16 12 THE COURT: Can we have our jury then please? Thank  
01:20:19 13 you.

01:21:13 14 (The jury entered the courtroom at 1:21 p.m.)

01:21:13 15 THE COURT: With no further issues, Mr. Umina, you  
01:21:17 16 may call your next witness.

01:21:18 17 MR. UMINA: Your Honor, plaintiff calls Dr. Metin  
01:21:24 18 Savasman.

01:21:26 19 THE COURT: Thank you very much.

01:21:46 20 Doctor, if I can ask you to pause here so you can be  
01:21:50 21 sworn in.

01:21:55 22 METIN SAVASMAN, M.D., PLAINTIFF'S WITNESS, SWORN

01:22:10 23 THE COURT: Good afternoon, Doctor, thank you very  
01:22:12 24 much. If I could ask you to adjust that microphone once  
01:22:15 25 you're comfortable. Please remove your mask while you're

testifying. Thank you so much.

Mr. Prince, you may proceed, sir.

MR. PRINCE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. PRINCE:

Q. Dr. Savasman, will you please state your full name?

A. Can Metin Savasman. C-A-N. M-E-T-I-N. S-A-V-A-S-M-A-N.

Q. Where are you currently employed?

A. In Charleston, medical examiner office, West Virginia  
State Medical Examiner Office.

Q. And are you a deputy chief medical examiner in that  
office?

A. Correct. Also I'm forensic pathologist.

Q. And as part of that position, do you perform autopsies?

A. Correct, sir.

Q. Were you working as a deputy chief medical examiner for  
the State of West Virginia, on August 3, 2017?

A. Correct, sir.

Q. Did you perform an autopsy on Philip Rhoades on  
August 3rd, 2017?

A. Correct, sir.

Q. What was the cause of death for Philip Rhoades?

A. At this point, can I find the report that I signed?

Q. Yes.

MR. PRINCE: May I approach, Your Honor?

01:23:31 1 THE COURT: You may.

01:23:33 2 BY MR. PRINCE:

01:23:37 3 Q. Dr. Savasman, I am handing you the autopsy report that

01:23:40 4 you just referenced.

01:23:42 5 A. Thank you. Can you repeat the question, please?

01:23:53 6 Q. Yes, sir. Please take a moment and review what I've just

01:23:56 7 handed you, if you don't mind.

01:24:13 8 A. I did it.

01:24:14 9 Q. Does that document look familiar to you?

01:24:17 10 A. Yes.

01:24:17 11 Q. Okay. So my question was, what was your finding as to

01:24:22 12 the cause of Philip Rhoades's death?

01:24:25 13 A. Gunshot wound of the head. Lacerating to cervical

01:24:33 14 spine -- cervical spine cord.

01:24:36 15 Q. Dr. Savasman, when was Philip Rhoades pronounced

01:24:56 16 deceased? The date and time, please. Should be on the first

01:25:02 17 page.

01:25:02 18 A. August, 2nd, 2017 at 03:26 p.m.

01:25:10 19 Q. How many times was Philip shot?

01:25:14 20 A. Single.

01:25:19 21 Q. Where did the bullet enter his body?

01:25:23 22 A. Right cheek.

01:25:24 23 Q. And where did it travel from there?

01:25:26 24 A. From right side of the head to the right side of the

01:25:34 25 neck, towards the right side of the spine -- I mean, the bone,

01:25:43 1 and bounced it after fracture and stopped there very close to  
01:25:51 2 spine wall.  
01:25:52 3 Q. You'd mentioned that the bullet lacerated Philip's spinal  
01:25:57 4 column; is that right?  
01:25:58 5 A. Correct.  
01:25:58 6 Q. Upon the bullet lacerating Philip's spinal column, was  
01:26:04 7 Philip able to move from the neck down with that type of  
01:26:12 8 injury?  
01:26:12 9 A. Was, you said? Was Philip.  
01:26:14 10 Q. Would he have been able to move from the neck down with a  
01:26:18 11 lacerated --  
01:26:20 12 A. Very unlikely. Very unlikely.  
01:26:48 13 MR. PRINCE: Just one moment, Your Honor.  
01:26:50 14 THE COURT: Certainly.  
01:27:24 15 BY MR. PRINCE:  
01:27:25 16 Q. Doctor, I want to clarify one point. Is your testimony  
01:27:27 17 today that there is a possibility that Philip could move his  
01:27:33 18 lower extremities with a severed --  
01:27:36 19 A. Very unlikely.  
01:27:37 20 Q. What does -- are you testifying that you think it's  
01:27:40 21 possible or --  
01:27:43 22 A. No.  
01:27:43 23 Q. -- with a severed cervical spine?  
01:27:46 24 A. I can't give you the percent because it's not a question,  
01:27:56 25 like, in 100 people in the same position has been researched



01:28:01 1 how many of them were moving or not. But if you are saying  
01:28:07 2 how much unlikely, very, very, very, unlikely. I mean, if you  
01:28:11 3 close your eyes and shoot to the sky you may hit a bird. That  
01:28:18 4 means very unlikely.

01:28:20 5 Q. Dr. Savasman, you gave a deposition in this matter; is  
01:28:47 6 that correct?

01:28:47 7 A. Yes.

01:28:48 8 Q. Do you recall? Okay. And there were attorneys present  
01:28:52 9 that asked you questions? At the deposition, do you recall  
01:28:57 10 that?

01:29:00 11 A. I don't recall right now.

01:29:02 12 Q. You don't -- well --

01:29:05 13 A. I don't recall right now. If you have another question I  
01:29:09 14 can answer.

01:29:10 15 Q. Okay. You don't know if you gave a deposition?

01:29:13 16 A. This case was five years ago. And I am doing 450  
01:29:18 17 autopsies and if you ask the question like that, I don't want  
01:29:21 18 to answer you wrong.

01:29:23 19 Q. I understand. Would your deposition transcript refresh  
01:29:26 20 your recollection?

01:29:26 21 A. Sure.

01:29:28 22 MR. PRINCE: May I approach, Your Honor?

01:29:29 23 THE COURT: You may.

01:29:59 24 BY MR. PRINCE:

01:30:02 25 Q. Dr. Savasman, I am handing you your deposition transcript

01:30:09 1 and I would ask for you to read on the bottom of page 20.

01:30:14 2 A. Okay.

01:30:15 3 Q. Line 24, is where it starts. There is a question.

01:30:19 4 A. Okay.

01:30:20 5 Q. And then there is an answer that you gave in response to  
01:30:25 6 that question, okay?

01:30:26 7 A. Okay.

01:30:27 8 Q. Let me know once you have read that?

01:30:29 9 A. You said 24?

01:30:31 10 Q. Yeah. Let me know once you've read that question and  
01:30:33 11 that answer.

01:30:34 12 A. Okay. 24 is --

01:30:36 13 Q. Just take a moment and read that to yourself, if you  
01:30:40 14 don't mind.

01:30:41 15 A. Oh, okay. My answer was --

01:30:58 16 THE COURT: One second, Doctor. One second, please.  
01:31:01 17 If you would let counsel know what page you're on?

01:31:04 18 MR. PRINCE: Yes. For the record we are at the  
01:31:07 19 bottom of page 20 at line 24, and the top of page 21, lines 1  
01:31:14 20 through 4.

01:31:14 21 BY MR. PRINCE:

01:31:15 22 Q. So I asked you, Dr. Savasman, you mentioned you didn't  
01:31:20 23 recall. Does this transcript refresh your recollection of  
01:31:23 24 your testimony?

01:31:23 25 A. Yes. Yes.

01:31:24 1 Q. Okay. So would it be fair then that you previously  
01:31:28 2 testified that --

01:31:31 3 A. I previously testify that he wouldn't be able to --

01:31:36 4 THE COURT: Doctor, hold on, let Mr. Prince ask his  
01:31:39 5 question.

01:31:40 6 A. I apologize.

01:31:41 7 Q. That's okay, I appreciate that. So would it be fair then  
01:31:47 8 now that your recollection is refreshed that you have  
01:31:50 9 previously testified that once Mr. Rhoades' spinal cord was  
01:31:56 10 severed, he would not have any movement of his lower  
01:31:58 11 extremities and your response to that, you said, "Absolutely,  
01:32:01 12 yeah." Is that correct?

01:32:02 13 A. Correct.

01:32:03 14 Q. Thank you.

01:32:04 15 MR. PRINCE: I have no further questions at this  
01:32:05 16 time, Your Honor.

01:32:06 17 THE COURT: Thank you, Mr. Prince.

01:32:08 18 Mr. Carroll, Ms. Durst.

01:32:11 19 MR. CARROLL: Thank you, Your Honor.

01:32:17 20 CROSS-EXAMINATION

01:32:17 21 BY MR. CARROLL:

01:32:37 22 Q. Good afternoon, Dr. Savasman.

01:32:38 23 A. Good afternoon, sir.

01:32:39 24 Q. Your only direct knowledge of Philip Rhoades is with  
01:32:43 25 regards to the autopsy that you performed; is that correct?

01:32:46 1 A. Correct.

01:32:47 2 Q. And you can't tell us from your autopsy what

01:32:50 3 Philip Rhoades was doing immediately prior to the time he was

01:32:54 4 struck by a bullet?

01:32:55 5 A. I cannot.

01:32:56 6 Q. You have no knowledge of the position of Philip Rhoades'

01:32:59 7 body at the time he was struck with the bullet?

01:33:02 8 A. I cannot.

01:33:03 9 Q. You do not know where Philip Rhoades' hands were at the

01:33:06 10 time he was struck with the bullet?

01:33:08 11 A. I don't.

01:33:09 12 Q. You were asked questions just now about functions of

01:33:15 13 Philip Rhoades' body after he was shot. Do you recall

01:33:18 14 answering those questions?

01:33:19 15 A. I recall.

01:33:20 16 Q. Okay. To the extent that Philip Rhoades would have lost

01:33:24 17 control of his arms or his body, would that have included his

01:33:29 18 vital functions as well?

01:33:30 19 A. If not immediately, almost immediately. I mean, there is

01:33:34 20 so much less difference between two expression. We can say

01:33:40 21 immediately, I think.

01:33:42 22 Q. You were asked questions about when Philip Rhoades was

01:33:49 23 pronounced dead. Can you tell me is there a difference

01:33:52 24 between being pronounced dead and when actual death occurs?

01:33:56 25 A. Pronouncement of death it's a legal issue and somebody is

1 coming and saying that after checking, this person is dead.

2 And other thing that you said, if you repeat it. Actual death

3 I think you said, am I right?

4 Q. That's correct.

5 A. Well, whenever the person died, he leaves, which if they

6 check before, who knows maybe he was dead also. Not at the

7 pronouncement moment, at that second.

8 Q. Okay. So do I understand correctly that actual death

9 occurs before someone is pronounced dead?

10 A. Yeah. Almost all the time.

11 Q. Okay.

12 MR. CARROLL: One moment, Your Honor.

13 THE COURT: Certainly.

14 A. Actually there is some exceptions for that.

15 Q. I'm sorry, could you repeat that?

16 A. There are exceptions for that. For example, the person,  
17 you know, vital functions can stop, those vital functions can  
18 be continued artificially.

19 Q. Okay.

20 A. So the pronouncement can be right now before and that is  
21 considered afterwards.

22 Q. Counsel also asked you a question a moment ago about  
23 Philip Rhoades would be, if I recall correctly, unable to use  
24 his arms after his spinal cord was severed. Is that  
25 consistent with your testimony earlier?

01:35:33 1 A. Yes.

01:35:33 2 Q. Okay. And if Philip Rhoades had his arms extended or his  
01:35:39 3 arms were under tension, he would not be able to maintain that  
01:35:42 4 tension in his arms after the bullet struck his spinal cord?

01:35:46 5 A. I don't think so.

01:35:48 6 MR. CARROLL: Your Honor, I have no further  
01:35:50 7 questions. Thank you, Dr. Savasman.

01:35:52 8 THE COURT: Thank you. Mr. Prince, anything further  
01:35:52 9 for the Doctor?

01:35:54 10 MR. PRINCE: Yes, Your Honor, briefly.

01:35:59 11 REDIRECT EXAMINATION

01:35:59 12 BY MR. PRINCE:

01:36:11 13 Q. Dr. Savasman, you still have your report in front of you;  
01:36:14 14 is that correct?

01:36:15 15 A. Yes.

01:36:16 16 Q. On page 4 of the report, it describes the direction of  
01:36:27 17 the wound path; is that correct?

01:36:29 18 A. Correct.

01:36:29 19 Q. What does that say?

01:36:31 20 A. The direction of the wound path with respect to position  
01:36:36 21 is right to left, downward and front to back.

01:36:44 22 Q. And thank you for that, Doctor. And on page 7, you also  
01:37:01 23 made note of the trajectory of the bullet that killed  
01:37:05 24 Philip Rhoades. Am I right?

01:37:09 25 A. Seven, I'm looking.

01:37:10 1 Q. Yes, sir. Page 7, letter F.

01:37:13 2 A. Let me check. Correct, direction and trajectory are used  
01:37:24 3 in the same meaning.

01:37:26 4 Q. Right. Okay. So when you say trajectory right to left,  
01:37:30 5 downward and slightly front to back, that's the same as the  
01:37:32 6 direction description you provided?

01:37:34 7 A. Correct, sir.

01:37:36 8 Q. Thank you.

01:37:36 9 MR. PRINCE: I have no further questions, Your Honor.

01:37:38 10 THE COURT: Thank you, Mr. Prince.

01:37:38 11 Mr. Carroll, anything further for the doctor?

01:37:41 12 MR. CARROLL: Just a few brief questions, Your Honor.

01:37:44 13 RECROSS-EXAMINATION

01:37:44 14 BY MR. CARROLL:

01:37:47 15 Q. Dr. Savasman, you did not perform any ballistics report  
01:37:52 16 or ballistics analysis for this incident; is that correct?

01:37:55 17 A. No, sir.

01:37:56 18 Q. Okay. So you can't tell exactly what position the body  
01:37:58 19 was in at what time that Philip Rhoades was shot with the  
01:38:02 20 bullet?

01:38:02 21 A. What time you said?

01:38:03 22 Q. At the time Philip Rhoades was struck with the bullet?

01:38:07 23 A. Uh-huh.

01:38:07 24 Q. Is it fair to say that you can't tell us what position  
01:38:09 25 his body was in at that point?

01:38:11 1 A. No, I can't.

01:38:12 2 MR. CARROLL: Thank you, Your Honor. I have no  
01:38:14 3 further questions.

01:38:14 4 THE COURT: Mr. Prince, anything further?

01:38:17 5 MR. PRINCE: No, Your Honor.

01:38:17 6 THE COURT: All right. May the doctor be excused?

01:38:20 7 MR. PRINCE: Yes, Your Honor.

01:38:22 8 MR. CARROLL: Yes, Your Honor. And I would also note  
01:38:24 9 that we had the doctor under subpoena for later in the week  
01:38:26 10 and I would like him excused from that subpoena as well.

01:38:28 11 THE COURT: Will do. Doctor, thank you for being  
01:38:28 12 here, you may step down. You are excused from any further  
01:38:31 13 subpoena obligations in this matter.

01:38:35 14 MR. PRINCE: May I approach, Your Honor?

01:38:37 15 THE COURT: Yes, you can leave that there, Doctor,  
01:38:39 16 we'll clean up. Thank you.

01:38:46 17 THE COURT: Madam Clerk, if I could impose on you.

01:39:01 18 MR. UMINA: Can we have one minute?

01:39:03 19 THE COURT: Absolutely. Yes. Absolutely.

01:39:53 20 THE COURT: Mr. Umina, are you ready to call your  
01:39:55 21 next witness, sir?

01:39:56 22 MR. UMINA: Yes, Your Honor. The plaintiff calls  
01:39:58 23 David Forsyth.

01:39:58 24 THE COURT: Thank you. Mr. Forsyth, sir, if I could  
01:40:00 25 ask you to step forward and pause before Madam Clerk so she



01:40:04 1 can swear you in. Thank you.

01:40:23 2 DAVID CHRISTOPHER FORSYTH, DEFENDANT, SWORN

01:40:23 3 THE COURT: Thank you very much, sir. As soon as  
01:40:25 4 you're seated and comfortable I'll ask you to adjust that  
01:40:27 5 microphone so everyone can hear you.

01:40:27 6 THE WITNESS: Yes, Your Honor.

01:40:29 7 THE COURT: You may be asked by Madam Court Reporter  
01:40:35 8 to slide a smidge to the right. All right. Thank you very  
01:40:35 9 much, sir.

01:40:36 10 Mr. Prince, you may proceed whenever you are ready.

01:40:38 11 MR. PRINCE: Thank you, Your Honor. I may at some  
01:40:43 12 point use the projector. I don't know if it's ready to rock  
01:40:46 13 and roll or not.

01:40:46 14 CROSS-EXAMINATION

01:40:46 15 BY MR. PRINCE:

01:41:33 16 Q. Officer Forsyth, will you please state your full name for  
01:41:35 17 the record.

01:41:35 18 A. David Christopher Forsyth.

01:41:37 19 Q. Where are you currently employed?

01:41:39 20 A. The Marion County Sheriff's Department.

01:41:41 21 Q. Now, Officer Forsyth, you would agree, wouldn't you, that  
01:41:47 22 a police officer is not permitted to knowingly violate  
01:41:52 23 someone's constitutional rights?

01:41:54 24 A. Absent exigent circumstances, correct.

01:41:56 25 Q. Okay. So, in your opinion, constitutional rights aren't

01:42:03 1 absolute, is that fair? Is that your testimony?

01:42:10 2 A. No, sir. What I'm stating is that --

01:42:14 3 Q. Well, you just testified --

01:42:16 4 THE COURT: Hold on a second, Mr. Prince, let him  
01:42:17 5 finish his answer. Go ahead, Mr. Forsyth.

01:42:20 6 A. They are absolute. I think what you're referring to here  
01:42:26 7 is that I violated his rights by killing him.

01:42:31 8 Q. I just asked a simple question.

01:42:34 9 A. Okay, sir. That's fine.

01:42:35 10 Q. You would agree, wouldn't you, Officer Forsyth, that if a  
01:42:41 11 police officer violates someone's constitutional rights, he or  
01:42:44 12 she should be held accountable?

01:42:49 13 A. Within reason, yes, sir.

01:42:51 14 Q. So there are circumstances, in your opinion, where an  
01:42:58 15 officer is allowed to violate someone's constitutional rights  
01:43:01 16 and they not be held accountable. That's okay for you?

01:43:05 17 A. I believe your name is Mr. Prince. Mr. Prince, what I'm  
01:43:08 18 saying is that I also have constitutional rights.

01:43:15 19 Q. My question wasn't about your constitutional rights,  
01:43:19 20 Officer. My question was whether you would agree that if a  
01:43:25 21 police officer violates someone's constitutional rights, he or  
01:43:29 22 she should be held accountable.

01:43:31 23 You can't agree to that, can you?

01:43:34 24 A. Sir, it's not that I can't agree to that. What you're  
01:43:39 25 trying to get me to say is that I was not justified in the

01:43:43 1 situation where Mr. Rhoades attempted to run me over with a  
01:43:47 2 vehicle.

01:43:48 3 Q. I'm not asking you about that at all. I'm asking you  
01:43:52 4 about constitutional rights of citizens. Will you or will you  
01:43:59 5 not answer this question?

01:44:02 6 A. Could you ask the question again, sir?

01:44:03 7 Q. I will. You would agree, wouldn't you, Officer, that if  
01:44:09 8 a police officer violates someone's constitutional rights, he  
01:44:14 9 or she should be held accountable?

01:44:18 10 A. Okay. There should be a review as to what happened, yes.

01:44:23 11 Q. And if that review finds someone's constitutional rights  
01:44:28 12 were violated, that officer should be held accountable, right?

01:44:34 13 A. Yes. If I violated some sort of policy and procedure,  
01:44:38 14 yes.

01:44:38 15 Q. And you knew that on August 2nd, 2017, right? You knew  
01:44:44 16 that?

01:44:44 17 A. Yes, sir.

01:44:44 18 Q. You would agree that a police officer is required to  
01:44:49 19 follow and comply with police department policies?

01:44:53 20 A. Yes.

01:44:53 21 Q. And certainly you would agree, Officer, that if a police  
01:44:59 22 officer violates police department policies and someone is  
01:45:05 23 killed, that police officer should be held accountable?

01:45:09 24 A. That's fair.

01:45:10 25 Q. Now, you were the officer that shot and killed

01:45:14 1 Philip Rhoades, correct?

01:45:15 2 A. Yes, sir.

01:45:16 3 Q. On August 2nd, 2017, you were on patrol with  
01:45:20 4 Officer Love?

01:45:23 5 A. Yes.

01:45:24 6 Q. You were driving the police cruiser and Officer Love was  
01:45:28 7 in the front passenger seat?

01:45:30 8 A. Yes.

01:45:31 9 Q. You were on vehicle patrol when you noticed a black Jeep  
01:45:37 10 Wrangler drive past you, correct?

01:45:38 11 A. I wasn't just on regular patrol.

01:45:43 12 Q. You were driving a police cruiser and you saw a black  
01:45:47 13 Jeep Wrangler drive past you; is that correct?

01:45:54 14 Can we not agree that you were driving --

01:45:56 15 A. Yes, I was driving the car.

01:45:57 16 Q. Okay. You were driving the car. You saw a black Jeep,  
01:46:01 17 right?

01:46:01 18 A. Yes, sir.

01:46:01 19 Q. Okay. All right. Officer Love is in the passenger's  
01:46:06 20 seat, right?

01:46:06 21 A. Yes, sir.

01:46:07 22 Q. Okay. I think these will be easy questions. So when you  
01:46:11 23 saw the black Jeep Wrangler drive past you, you decided to  
01:46:16 24 turn your police cruiser around and engage the black Jeep in a  
01:46:21 25 pursuit, fair?

01:46:22 1 A. Yes.

01:46:23 2 Q. The pursuit we've heard about led to a wooded area in  
01:46:29 3 Marion County, right?

01:46:30 4 A. That's correct.

01:46:32 5 Q. And that's where -- oh, and the wooded area in Marion  
01:46:39 6 County led to a dirt road, right?

01:46:45 7 A. The gravel road led to an access road which led to a well  
01:46:54 8 pad.

01:46:54 9 COURT REPORTER: Led toward --

01:46:54 10 THE WITNESS: A well pad, oil and gas area, yes,  
01:46:54 11 ma'am.

01:46:54 12 COURT REPORTER: Thank you.

01:46:57 13 BY MR. PRINCE:

01:46:57 14 Q. And that well pad is where you located the black Jeep  
01:47:03 15 Wrangler operated by Philip Rhoades, correct?

01:47:06 16 A. Yes, sir.

01:47:07 17 Q. You pull into that small clearing and exit your police  
01:47:13 18 cruiser, correct?

01:47:13 19 A. There was a little more to it than that, but yes.

01:47:16 20 Q. A little more to it than that?

01:47:18 21 A. Yes, sir. As I entered the area, the Jeep wasn't  
01:47:21 22 setting, I think I used the word adjacent, but a better word  
01:47:26 23 may be perpendicular to my vehicle and drove towards my  
01:47:31 24 vehicle and almost stuck me. And then the vehicle began to  
01:47:35 25 back up and make a three-point turn. At that point I did exit

01:47:38 1 my vehicle.

01:47:39 2 Q. And your police cruiser was still moving when you exited,  
01:47:49 3 correct?

01:47:50 4 A. That's correct, it was. Unfortunately I didn't get it  
01:47:54 5 into park, but I can explain that.

01:47:56 6 Q. Okay. You pull into the small clearing. You didn't put  
01:47:59 7 your vehicle in park. You get out of your car, correct?

01:48:02 8 A. Could you restate the question?

01:48:07 9 Q. You approached the small clearing. You fail to put your  
01:48:12 10 vehicle in park. You get out of the car, right?

01:48:14 11 A. Yes.

01:48:15 12 Q. And your vehicle was still moving because it was not in  
01:48:19 13 park. You failed to put it in park?

01:48:21 14 A. That's correct. I didn't realize that at the time, but  
01:48:23 15 in the heat of the moment, I did not get it into park.

01:48:27 16 Q. And when you exited your police cruiser you were standing  
01:48:31 17 in front of the Jeep, right?

01:48:33 18 A. When I exited my vehicle, I was attempting to get to the  
01:48:38 19 rear of it. The vehicle continued to move forward, therefore,  
01:48:43 20 that placed me in an open area, yes, in front of the Jeep.

01:48:48 21 Q. This photograph represents where you were standing,  
01:48:54 22 doesn't it?

01:48:56 23 A. In that general area, yes, sir.

01:48:57 24 Q. Okay. At no point during the killing of Philip did you  
01:49:04 25 see him with a handgun, right?

01:49:09 1 A. No, sir, although we did have information that he could  
01:49:12 2 possibly be armed.

01:49:13 3 Q. Well, we're going to talk about that.

01:49:15 4 A. Yes, sir.

01:49:15 5 Q. At no point did you see him with a rifle, right?

01:49:20 6 A. No, sir.

01:49:20 7 Q. Didn't see him with a shotgun, right?

01:49:22 8 A. No, sir.

01:49:23 9 Q. Didn't see him with a knife, right?

01:49:26 10 A. No, sir.

01:49:27 11 Q. Didn't see him with any weapons whatsoever?

01:49:30 12 A. Other than the vehicle, no, sir.

01:49:32 13 Q. We're going to talk about that, too. Other than the Jeep  
01:49:37 14 that you claim was a weapon, you did not see him with any  
01:49:42 15 weapons at any point during this entire exchange, did you?

01:49:46 16 A. Other than vehicle that was driving at me, I saw him with  
01:49:49 17 no other weapons.

01:49:50 18 Q. From the time you exited your police cruiser to the time  
01:49:55 19 you shot and killed Philip, you would estimate approximately a  
01:49:58 20 couple seconds elapsed?

01:50:01 21 A. I believe during my deposition I approximated ten. I  
01:50:05 22 couldn't give a definite answer then and I couldn't give you a  
01:50:07 23 definite answer now.

01:50:08 24 Q. Two to 10 seconds, approximately?

01:50:12 25 A. It could have been more than that.

01:50:19 1 Q. Now you claim you shouted instructions at Phillip,  
01:50:24 2 correct?

01:50:24 3 A. That's correct.

01:50:25 4 Q. And in response, you only gave Philip seconds to respond  
01:50:32 5 to your instructions, right?

01:50:34 6 This all happened in seconds, didn't it?

01:50:37 7 A. Again, I can't give you an exact time frame of when it  
01:50:41 8 all happened.

01:50:42 9 Q. Right. That's why my question was seconds. We're not  
01:50:45 10 talking about 30 minutes here, are we?

01:50:47 11 A. No, sir, it wasn't 30 minutes.

01:50:49 12 Q. We're talking about seconds, right? This whole ordeal  
01:50:52 13 lasted seconds.

01:50:53 14 A. That's correct.

01:50:53 15 Q. Okay. So you get out of police cruiser, you give  
01:50:56 16 instructions to Philip, you gave him seconds to comply,  
01:51:00 17 correct?

01:51:00 18 A. That's all the time that the --

01:51:04 19 Q. Is that correct?

01:51:05 20 A. That's all the time that the incident took.

01:51:08 21 Q. Right. I wasn't asking about the incident. I'm asking  
01:51:11 22 about the time you got out of your police cruiser, removed  
01:51:14 23 your holster, removed your firearm from its holster, and gave  
01:51:18 24 instructions to Philip. You had seconds. You gave him  
01:51:22 25 seconds to comply before you opened fire, right?



01:51:25 1 A. Sir, I gave as much time as I had. The vehicle was  
01:51:29 2 driving at me.

01:51:30 3 Q. I understand that. My question was about seconds. You  
01:51:35 4 gave Philip seconds to comply, right?

01:51:38 5 A. Yes, sir. And when I started giving my statement, when I  
01:51:42 6 started telling him to show me his hands, stop the vehicle, he  
01:51:45 7 was still in the vehicle and backing up.

01:51:51 8 Q. At this time the Jeep -- his Jeep was still running?

01:51:55 9 A. Yes.

01:51:56 10 Q. Right. Your car is running?

01:51:58 11 A. Yes.

01:52:00 12 Q. Right? And we know, Officer, based on the evidence in  
01:52:30 13 this case, that in a matter of seconds from you exiting your  
01:52:35 14 police cruiser you determined and you decided that Philip  
01:52:38 15 needed to die, right?

01:52:41 16 A. No, sir. That's not correct.

01:52:44 17 Q. Were you shooting to wound him?

01:52:48 18 A. I was shooting to stop the threat which was the vehicle  
01:52:53 19 driving at me.

01:52:54 20 Q. So you weren't shooting at Philip, you were shooting at  
01:52:59 21 the vehicle; is that your testimony?

01:53:00 22 A. The threat is a vehicle that was coming at me, sir, he  
01:53:03 23 was driving the vehicle.

01:53:05 24 Q. And you believed that your bullets could stop a vehicle;  
01:53:23 25 is that fair?

01:53:23 1 A. I believed that it could stop him from driving at me.

01:53:26 2 Q. But you were shooting at him, you just testified, you  
01:53:29 3 were shooting at the Jeep?

01:53:30 4 A. He was operating the vehicle, so he was inside of the  
01:53:33 5 Jeep.

01:53:33 6 Q. So you were shooting at Philip, right?

01:53:37 7 A. Who was operating the vehicle that was driving at me,  
01:53:40 8 yes.

01:53:40 9 Q. So it's your testimony that your killing Philip was  
01:53:46 10 justified because he was driving the Jeep towards you, fair?

01:53:51 11 A. That's my testimony. That Mr. Rhoades drove that Jeep at  
01:53:55 12 me, yes.

01:53:56 13 Q. That's not what I am asking you. It's your testimony  
01:54:00 14 that your killing Philip was justified because he was driving  
01:54:06 15 the Jeep towards you, fair?

01:54:08 16 A. That's correct, it was justified because he was  
01:54:10 17 attempting to kill me with that Jeep.

01:54:12 18 Q. Now, you agree that the investigating West Virginia State  
01:54:17 19 Trooper observed the Jeep to be running when he arrived on  
01:54:20 20 scene, fair?

01:54:21 21 A. Could you restate the question, sir?

01:54:23 22 Q. You agree that the investigating West Virginia State  
01:54:28 23 Trooper observed the Jeep to still be running when he arrived  
01:54:32 24 on scene, right?

01:54:33 25 A. I believe that's what he testified to, yes, sir.

01:54:35 1 Q. No reason to dispute Trooper Branham's finding that the  
01:54:40 2 Jeep was running when he arrived, right?

01:54:42 3 A. No, sir.

01:54:43 4 Q. You didn't turn off the Jeep when you dragged his body  
01:54:47 5 out of it, did you?

01:54:48 6 A. Excuse me. No, sir.

01:54:49 7 Q. You didn't instruct Deputy Love to turn off the Jeep,  
01:54:53 8 right?

01:54:53 9 A. No, sir.

01:54:54 10 Q. You would agree that in order for a stationary five-speed  
01:54:57 11 vehicle to be running without an occupant, it must be in  
01:55:01 12 neutral, right?

01:55:02 13 A. That's correct.

01:55:03 14 Q. And if not in neutral, that vehicle, that five-speed  
01:55:08 15 vehicle would stall and shut off if no one is holding the  
01:55:12 16 clutch, right?

01:55:13 17 A. That's correct.

01:55:13 18 Q. And since a five-speed vehicle must be in neutral to be  
01:55:17 19 running without an occupant, you would agree that if the Jeep  
01:55:19 20 was running after Philip was removed, it was in neutral at  
01:55:23 21 that time?

01:55:24 22 A. Yes, sir.

01:55:25 23 Q. Let me get this straight, Officer. You agree that an  
01:55:33 24 unoccupied five-speed vehicle will stall out if running and in  
01:55:39 25 gear, and you agree that this five speed was running without

an occupant, and are still not willing to admit that it was in neutral when you opened fire on Philip Rhoades?

A. Mr. Prince, I don't know what happened inside that vehicle between the time I started firing and the time I stopped firing, but I know without a shadow of a doubt that that vehicle was coming at me. That's what I perceived that vehicle coming at me which is why I started firing.

Q. But you can't explain to the jury how the Jeep could be in neutral and also somehow moving towards you so aggressively, can you?

A. Could you repeat your question, please?

Q. Sure. You can't explain to the jury, how the Jeep could be in neutral and also somehow be coming towards you aggressively?

A. I don't know how the vehicle ended up in neutral. I could speculate it could be that he was trying to change gears, it could be --

MR. PRINCE: Objection, Your Honor. This witness is speculating.

THE COURT: You asked the question, he can answer it, sir.

A. It could be that he was trying to change gears, it could be that after I struck Mr. Rhoades he fell over the center console and knocked it out of gear, I don't know. But what I do know is that vehicle was coming at me when I was shooting.

Q. And you would agree that one such possible explanation is that the vehicle was in neutral?

A. No, sir. I will not agree with that.

Q. That's one explanation you will not accept, right? Because that explanation is inconsistent with your argument, isn't it?

A. It's because I know what happened that day.

Q. It's not consistent with your --

MS. DURST: Your Honor, would he let the witness --

THE COURT: I've got it. Mr. Forsyth, if you will let counsel finish his question first, and Counsel, you need to let the witness finish their answer first.

Is there another objection, Ms. Durst?

MS. DURST: Not at this time, Your Honor.

THE COURT: Understood. You may proceed, Counsel, ask your question again.

I will ask both of you to please refrain from speaking overtop of one another.

BY MR. CARROLL:

Q. Officer Forsyth, the only explanation you're not willing to accept is the one that is inconsistent with your defense, correct?

A. I know what was true, sir. I know what I saw.

Q. Now, this -- excuse me. This area was flat, right? So this is not a situation where the vehicle would be moving

01:58:19 1 forward unless it were in gear, correct?

01:58:22 2 A. That's fair.

01:58:23 3 Q. Now, after you killed Philip, multiple police officers  
01:58:30 4 and first -- and emergency responders were at the scene,  
01:58:33 5 right?

01:58:33 6 A. There were a lot of people showing up afterwards, yes,  
01:58:36 7 sir.

01:58:36 8 Q. Sir, and you have no reason to believe that anyone  
01:58:38 9 tampered with the gear position of the Jeep after you killed  
01:58:42 10 Philip, right?

01:58:42 11 A. I don't believe that anybody tampered with anything in  
01:58:45 12 the vehicle or the scene, no, sir.

01:58:47 13 Q. Do you wear glasses, Officer Forsyth?

01:58:58 14 A. I do now.

01:59:00 15 Q. At the time of the killing, did you wear corrective  
01:59:03 16 lenses or glasses?

01:59:04 17 A. I don't recall if I did or didn't. I know I have  
01:59:06 18 recently within the last couple of years been given glasses.

01:59:11 19 Q. Hearing aids? Do you wear hearing aids?

01:59:14 20 A. No, sir.

01:59:15 21 Q. You weren't wearing glasses when you shot and killed  
01:59:22 22 Philip, were you?

01:59:23 23 A. No, sir, I don't believe I was.

01:59:25 24 Q. Let's talk about the seven shots that you fired at  
01:59:46 25 Philip Rhoades. You fired the first shot and you didn't stop

01:59:53 1 repeating verbal commands then, did you?

01:59:57 2 A. Sir, everything was happening pretty quickly. I don't  
02:00:00 3 recall if I was giving verbal commands while I was shooting or  
02:00:03 4 not.

02:00:03 5 Q. You don't know, fair?

02:00:05 6 A. I don't recall if I gave verbal commands while I was  
02:00:10 7 shooting. It's possible, but it's also not possible.

02:00:13 8 Q. And that would be the same for all seven shots, right?

02:00:20 9 You just don't know, fair?

02:00:25 10 A. I gave verbal commands to Mr. Rhoades multiple times  
02:00:30 11 prior to him driving at me. And continued to give verbal  
02:00:36 12 commands until I started firing. Again, while I was firing, I  
02:00:39 13 don't recall if I was doing both things at the same time.

02:00:44 14 Q. Just to be clear, Officer, the Jeep accelerating towards  
02:00:56 15 you, that was the sole basis for your use of lethal force,  
02:01:01 16 right?

02:01:01 17 A. The vehicle was about to strike me. It was coming at me,  
02:01:05 18 it was going to hit me, it was going to kill me, which is why  
02:01:08 19 I used lethal force.

02:01:11 20 Q. That's the only reason, right?

02:01:14 21 A. In that instance, yes.

02:01:22 22 Q. You understand that one of your shots struck Philip in  
02:01:29 23 the face, correct?

02:01:31 24 A. Yes, sir, I do.

02:01:32 25 Q. You were just here for the medical examiner's testimony,

02:01:37 1 right?

02:01:37 2 A. Yes, sir.

02:01:38 3 Q. You understand that that bullet lodged in Phillip's neck,  
02:01:41 4 right?

02:01:41 5 A. That's what I heard the medical examiner say, yes, sir.

02:01:45 6 Q. And that it severed his spinal column, right?

02:01:48 7 A. Yes, sir.

02:01:49 8 Q. And the impact that that would have had on Phillip's  
02:01:51 9 ability to move his arms and legs, right? You heard that  
02:01:54 10 testimony as well?

02:01:55 11 A. Yes.

02:01:55 12 Q. Is it fair to say, Officer, that you're not able to  
02:02:06 13 explain how a Jeep with a manual transmission that was  
02:02:12 14 allegedly coming towards you in an aggressive manner, came to  
02:02:17 15 a stop while continuing to run when the operator of the Jeep  
02:02:20 16 was paralyzed from the neck down, and thus unable to hit the  
02:02:25 17 brake, push in the clutch or take it out of gear; is that  
02:02:28 18 fair?

02:02:28 19 A. Again, without speculating, no.

02:02:32 20 Q. Let's just take a step back, Officer Forsyth. Your  
02:02:39 21 killing Philip on August 2nd, 2017, that wasn't the first time  
02:02:43 22 you fired your gun that day, was it?

02:02:45 23 A. No, sir, it was not.

02:02:46 24 Q. You were asked to assist with a wounded deer on the side  
02:02:53 25 of the road -- right? -- in Marion County?



02:02:54 1 A. It was at headquarters in Marion County, yes, sir.

02:02:59 2 Q. It took you five shots to kill that deer, didn't it?

02:03:04 3 A. It probably wouldn't have taken five shots, sir, but I  
02:03:09 4 used five shots because I didn't want the deer to get up and  
02:03:12 5 run away. And I didn't want to use a shotgun because we were  
02:03:16 6 in an urban area, and just more likely chance for a ricochet,  
02:03:19 7 or something of that nature, so...

02:03:20 8 Q. Yeah, you shot five times at the deer, right?

02:03:22 9 A. Yes.

02:03:23 10 Q. Now, you weren't wearing glasses when you shot the deer  
02:03:26 11 either, were you?

02:03:28 12 A. No, sir, not that I recall.

02:03:30 13 Q. Now, you indicated a moment ago that you were standing  
02:03:37 14 directly in front of the Jeep when you opened fire on Philip.

02:03:41 15 Do you recall that?

02:03:44 16 A. Yes, sir.

02:03:44 17 Q. Now, you agree -- right? -- that you didn't take any  
02:03:49 18 steps to get out of the way of this Jeep, did you?

02:03:55 19 A. I don't recall ever taking any evasive action, no, sir.

02:03:58 20 Q. Are you telling me that you did or that you didn't?

02:04:02 21 A. I don't recall ever taking any evasive action.

02:04:09 22 Q. Evasive action, you mean, taking a step to get out of the  
02:04:13 23 way of a moving Jeep?

02:04:15 24 Is that what you're referring to by evasive?

02:04:17 25 A. I didn't try to get out of the way of the vehicle while

02:04:20 1 it was driving at me, if that's what you're asking.

02:04:22 2 Q. That's exactly what I'm asking, thank you. You did not  
02:04:23 3 try to get out of the way of this Jeep, right?

02:04:26 4 A. I didn't really have a lot of time when it was coming  
02:04:29 5 towards me, sir.

02:04:30 6 Q. You didn't take -- in fact, you didn't take one single  
02:04:35 7 step to get out of the way of this Jeep, did you?

02:04:38 8 A. Sir, again, I have testified here that I exited my  
02:04:41 9 vehicle, tried to get to the back of it and I ended up in an  
02:04:45 10 open area.

02:04:46 11 Q. Officer, you didn't take a single step to get out of the  
02:04:49 12 way of that Jeep because it wasn't moving, was it?

02:04:53 13 A. That's incorrect.

02:04:54 14 Q. You didn't take a single step to get out of the way of  
02:04:57 15 that vehicle because it was in neutral, just as it was when  
02:05:01 16 you killed Philip?

02:05:01 17 A. No, sir, that's incorrect.

02:05:03 18 Q. Now, the state trooper investigating this shooting came  
02:05:10 19 to get your statement on August 2nd, didn't he?

02:05:13 20 A. Yes, sir, he did.

02:05:14 21 Q. You didn't give him one, did you?

02:05:16 22 A. No, sir.

02:05:17 23 Q. Didn't give him on August 3rd either, did you?

02:05:20 24 A. No, sir, I didn't.

02:05:20 25 Q. Waited a couple days before you made your official

02:05:23 1 statement, right?

02:05:24 2 A. Yes, sir.

02:05:24 3 Q. And when you gave your official statement, you didn't  
02:05:28 4 realize that the Jeep Philip died in was a five speed, did  
02:05:30 5 you?

02:05:30 6 A. No, sir.

02:05:31 7 Q. When you gave your written statement, it didn't occur to  
02:05:33 8 you that since the vehicle was still running after you killed  
02:05:36 9 Philip that it must be in neutral, not in gear. You didn't  
02:05:41 10 know that at the time?

02:05:42 11 A. I didn't know what was inside the vehicle.

02:05:46 12 Q. And that's why, Officer Forsyth, that's why when you  
02:05:52 13 prepared your written statement to Trooper Branham you thought  
02:05:55 14 it would be safe to claim the Jeep drove at you before you  
02:06:00 15 killed him, isn't it?

02:06:01 16 A. No, sir, that's not the reason why I did that. I did  
02:06:04 17 that because that's what happened.

02:06:08 18 Q. Regardless, Officer Forsyth, we know -- right? -- that  
02:06:14 19 vehicles in neutral don't accelerate, do they?

02:06:19 20 A. That's correct. Not without some other type of stimulus.

02:06:26 21 MR. PRINCE: One moment, Your Honor.

02:06:27 22 THE COURT: Certainly.

02:06:52 23 MR. PRINCE: No further questions at this time, Your  
02:06:53 24 Honor.

02:06:53 25 THE COURT: Understood. Thank you very much, Mr.

Prince.

Ms. Durst.

MS. DURST: Yes, Your Honor.

MR. PRINCE: Just one moment to get this picked up.

THE COURT: Sure.

MS. DURST: Your Honor, with the Court's permission, I will just conduct my questioning of Deputy Forsyth at this moment in time. I will not be calling him in our case in chief.

THE COURT: Any objection to that?

MR. PRINCE: No, Your Honor.

THE COURT: Understood. You may proceed.

MS. DURST: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. DURST:

Q. Deputy Forsyth, let's go back. Sorry. Let me take my mask off. Let's go ahead and back up a little bit.

Can you -- we know that you're with the sheriff's department. But can you tell the jury just a little bit about yourself?

A. Yes, ma'am. Born in Southwest Pennsylvania, lived down there up there until I was around 12 or 13. I had moved here around 13 years old. I lived a lot of different places, Clarksburg, Morgantown, Daybrook, like I said, I bounced around a lot. I graduated from a private school called Act

Academy. It was a religious school, and then went on to work my way through college at Fairmont State.

I received my degree in criminal justice. I've lived here in Marion County while going to school and then since then I've lived here -- I lived in Harrison County, I apologize. I've lived in Marion County from then on until currently where I still live there.

Q. Okay. You've told the jury already that you're employed with the sheriff's department, and we know you were employed in August of 2017. How long had you been -- well, let's ask it this way. In August of 2017, how long had you been with the Marion County Sheriff's Department?

A. So I was hired March 3rd of 2010. So that would have been 16 some odd change years -- right? -- or close to -- no, sorry, that could have been seven and some change.

Q. So you said you started in 2010?

A. Yes, ma'am.

Q. Okay. And this incident occurred in 2017, so about seven years?

A. Correct.

Q. Okay. Are you married? Do you have kids?

A. Yes. I am married to my wife, Kaitlin. And -- excuse me. I have three young children.

Q. Okay. On August 2nd, of 2017, Mr. Prince just asked you questions with regard to pursuing the Jeep, okay?

Can you tell the jury how it is that you became involved in a pursuit of the Jeep Mr. Rhoades was driving?

A. Yes, ma'am. So I was at the office and we had heard over the radio, Deputy Wesley Wheeler had called in pursuit of a black in color Jeep Wrangler. He had given out the license plate number and then he had stated that he was in pursuit of Mr. Rhoades. He had known him, known who it was. So he identified him as Philip Rhoades.

MS. DURST: Your Honor, at this moment in time, as previously discussed, these are individual clips of radio traffic we would like to go ahead and play each of those clips.

THE COURT: Understood. That exhibit has been stipulated to as admissible. You may publish as you deem appropriate, Ms. Durst, and again, that's Defendant's Exhibit No. 2, correct?

MS. DURST: Yes, Your Honor. Thank you.

THE COURT: Let's play the first clip just to make sure everyone can hear it appropriately.

MR. CARROLL: That's correct, Your Honor, I will be turning up the volume on my end to the max as I believe that's required.

(Playing radio clip.)

MS. DURST: Your Honor, can we ask if the jury can hear that?

02:11:42 1 THE COURT: Can everybody hear that okay? Can you  
02:11:46 2 crank that up at all any further, Madam Clerk? Try again,  
02:11:50 3 Mr. Carroll. I realize that's quick and a short snippet. Can  
02:11:58 4 everybody hear? All right.

02:12:00 5 MS. DURST: Okay.

02:12:02 6 BY MS. DURST:

02:12:02 7 Q. Deputy Forsyth, before we play some more of the clips, on  
02:12:07 8 the screen that you see, did you see that there are times  
02:12:12 9 associated with each of these clips?

02:12:14 10 A. Yes, ma'am.

02:12:15 11 Q. Okay. Are those times set forth in military time?

02:12:25 12 A. Yes, ma'am, it appears they are. So that would have been  
02:12:29 13 144304, which would have been roughly 2:43.

02:12:33 14 Q. So 2:43:04?

02:12:37 15 A. Correct, ma'am.

02:12:37 16 Q. Okay. All right. Let's go ahead. Let me ask you there.  
02:12:44 17 Let's play that clip.

02:12:45 18 MS. DURST: Play it again, if you could, Mr. Carroll.

02:12:47 19 (Playing radio clip.)

02:12:52 20 Q. And that clip cuts off. Are you able to tell the jury  
02:12:54 21 who that deputy is that radioed that?

02:12:56 22 A. That is Deputy Wesley Wheeler.

02:12:58 23 Q. Okay. Let's -- what is the time of the next clip?

02:13:01 24 A. Looks like it is 144308.

02:13:06 25 Q. So about four seconds later?

02:13:09 1 A. Yes, ma'am.

02:13:10 2 Q. Okay. Let's play that, please.

02:13:12 3 (Playing radio clip.)

02:13:15 4 Q. Is that the continuation of Deputy Wheeler reporting that

02:13:20 5 it was a black Wrangler, soft top?

02:13:23 6 A. Yes, ma'am.

02:13:24 7 Q. Okay. Let's play the -- what is time of the next clip?

02:13:27 8 A. Looks like it's 144343.

02:13:32 9 Q. Okay. So this is still 2:43, but almost about 39 seconds

02:13:37 10 after the first clip that we listened to?

02:13:40 11 A. Correct.

02:13:41 12 MS. DURST: Let's play that one, Mr. Carroll.

02:13:46 13 (Playing radio clip.)

02:13:46 14 Q. Do you know who that was?

02:13:48 15 A. That was Deputy Mundell.

02:13:50 16 Q. Mundell, okay. Let's play the next clip. Well, what is

02:13:54 17 the time of the next clip?

02:13:56 18 A. 1444, excuse me while I get my glasses out.

02:14:03 19 THE COURT: Take your time, sir.

02:14:19 20 Ms. Durst, if you wouldn't mind repeating your question,

02:14:20 21 ma'am, please.

02:14:20 22 MS. DURST: Yes, Your Honor.

02:14:20 23 BY MS. DURST:

02:14:20 24 Q. The third clip I believe where we're getting ready to

02:14:23 25 listen to, can you tell the jury what time that clip was?



02:14:27 1 MS. DURST: Fourth, Your Honor, I apologize.

02:14:27 2 A. It's going to be 144432.

02:14:31 3 Q. Okay. So this is now 2:44 and 32 seconds?

02:14:36 4 A. That's my understanding, yes.

02:14:37 5 Q. Okay. Let's play that clip.

02:14:37 6 (Playing radio clip.)

02:14:43 7 Q. Who was that?

02:14:43 8 A. That would have been then corporal, now Sergeant Russell

02:14:49 9 Garrett.

02:14:50 10 Q. Okay. You told me that you were at the station and heard

02:14:58 11 over the radio Deputy Wheeler indicate that he was in pursuit

02:15:01 12 of Mr. Rhoades?

02:15:02 13 A. Yes.

02:15:03 14 Q. Are you able to hear these reports over the radio as you

02:15:12 15 are getting to your cruiser, or in your cruiser?

02:15:15 16 A. Yes, ma'am. So I carry my portable radio even in the

02:15:18 17 office and then we have a radio station in the office, and you

02:15:23 18 can hear that coming over the radio. I mean, everyone can

02:15:26 19 hear it. Anyone with a scanner or whatever.

02:15:30 20 Q. The clip that we listened to previously that you said was

02:15:34 21 Deputy Mundell, that said "Last I heard may be armed." Had

02:15:37 22 you heard that before you got in your cruiser or after you got

02:15:40 23 into your cruiser?

02:15:41 24 A. I don't recall if I was in my cruiser already or not,

02:15:44 25 ma'am.

02:15:45 1 Q. Okay. Let's go to the next clip, which would be clip  
02:15:48 2 number five. Could you tell the jury what time that clip --  
02:15:51 3 A. Looks like it's going to be 145132.  
02:15:56 4 Q. And is it your understanding, Deputy Forsyth, that that  
02:16:00 5 time is the time that the transmission was made?  
02:16:03 6 A. That's my understanding, yes.  
02:16:05 7 MS. DURST: Let's play that clip.  
02:16:09 8 (Playing radio clip.)  
02:16:09 9 Q. Who is that?  
02:16:10 10 A. That sounded like me, ma'am.  
02:16:13 11 Q. Okay. And you're asking who, what?  
02:16:17 12 A. Could you play the traffic again?  
02:16:24 13 (Playing radio clip.)  
02:16:24 14 A. It sounded like I asked Donny if he had passed a black  
02:16:30 15 Jeep.  
02:16:30 16 Q. And who would be Donny?  
02:16:32 17 A. With there being snippets, you know, I don't recall if it  
02:16:37 18 was Donny Wheeler or Donny Mundell. Unfortunately we have two  
02:16:42 19 Donnys. It could have been either of them, both were  
02:16:44 20 assisting.  
02:16:45 21 Q. Okay. What is time of the next clip, please?  
02:16:48 22 A. 145138.  
02:16:51 23 Q. 2:51 and 38 seconds?  
02:16:54 24 A. Yes, ma'am.  
02:16:55 25 Q. And so this is now about nine minutes or so after the

02:17:00 1 first clip we listened to, if I have done my math right?

02:17:03 2 A. Give or take, yes.

02:17:04 3 Q. Let's play that.

02:17:08 4 (Playing radio clip)

02:17:08 5 A. That was Donny Mundell saying negative.

02:17:11 6 Q. Okay. So in listening to that clip are you able to tell  
02:17:14 7 the jury whether you were asking Donny Wheeler or Donny  
02:17:18 8 Mundell?

02:17:19 9 A. Yes. I must have been asking Donny Mundell who was  
02:17:24 10 behind me, he was in car .

02:17:27 11 Q. Where is this area in Marion County? Is there anything  
02:17:31 12 like a landmark or a location that you can describe?

02:17:36 13 A. Yes. So there used to be an auction barn there if you  
02:17:41 14 are heading north from Fairmont to Mannington, it would have  
02:17:46 15 been on the right-hand side before you get to North Marion  
02:17:49 16 High School, which I guess that's a pretty big landmark, but  
02:17:52 17 it would have been that stretch just south of North Marion  
02:17:57 18 High School.

02:17:57 19 Q. Okay. At this point in time, are you able to tell the  
02:18:01 20 jury if you had made it to your cruiser or not, when you're  
02:18:07 21 asking Deputy Mundell if the Jeep had passed him?

02:18:09 22 A. Yes, I believe that I asked that because I had passed the  
02:18:14 23 Jeep at that point that matched the description.

02:18:17 24 Q. Let's go -- what is the time of the next clip, please?

02:18:21 25 A. 145142.

02:18:24 1 MS. DURST: Okay. Can you play that, please,  
02:18:26 2 Mr. Carroll.

02:18:31 3 (Playing radio clip.)

02:18:31 4 Q. You had just asked Deputy Mundell if he had passed a  
02:18:36 5 black Jeep and he said negative. Why did you ask that  
02:18:39 6 question again?

02:18:40 7 A. I had asked it again because I didn't hear his initial  
02:18:42 8 radio traffic that he had said negative, and I didn't hear it,  
02:18:46 9 I was excited, and I got louder than I probably should have.  
02:18:52 10 It happens from time to time when we talk to each other on the  
02:18:54 11 radio.

02:18:54 12 Q. What is the time on the next clip?

02:18:58 13 A. 145146.

02:19:00 14 Q. So just about four seconds after your radio transmission  
02:19:04 15 to Deputy Mundell asking again if he had seen the black Jeep?

02:19:08 16 A. Yes.

02:19:09 17 MS. DURST: Mr. Carroll, please.

02:19:12 18 (Playing radio clip.)

02:19:12 19 Q. Who was that?

02:19:13 20 A. That was Deputy Mundell again.

02:19:15 21 Q. Okay. What's the time of the next clip?

02:19:18 22 A. 145148.

02:19:23 23 Q. Okay. So two seconds after that clip we just listened  
02:19:28 24 to?

02:19:28 25 A. Yes, ma'am.

02:19:29 1 MS. DURST: Okay. Let's play that, Mr. Carroll.

02:19:29 2 (Playing radio clip.)

02:19:33 3 Q. Who is that?

02:19:33 4 A. That was me.

02:19:34 5 Q. Okay. And when you say, "He cut up East Run." What are  
02:19:41 6 you referring to?

02:19:42 7 A. Mr. Rhoades, in the black Jeep.

02:19:44 8 Q. So the black Jeep that you were involved in a pursuit  
02:19:47 9 had -- what you had seen, cut up East Run?

02:19:49 10 A. Yes, ma'am. So previously Deputy Mundell had stated that  
02:19:54 11 he was in that car anything area, so I knew based on where I  
02:19:57 12 was and where Deputy Mundell was, the only road that he could  
02:20:01 13 have cut up between me and Deputy Mundell was East Run.

02:20:04 14 Q. Had you seen the black Jeep at that point?

02:20:07 15 A. Yes.

02:20:08 16 Q. Where had you seen the black Jeep?

02:20:10 17 A. It was on the straight stretch where that old auction  
02:20:13 18 barn used to be, that hilltop swap shop, or maybe chance, I  
02:20:18 19 forget what it was called. It was in that straight stretch I  
02:20:22 20 passed the black Jeep matching the suspect description with a  
02:20:25 21 male subject, who I believed to be Mr. Rhoades inside the  
02:20:27 22 vehicle.

02:20:27 23 Q. When you say you passed it, could you describe to the  
02:20:30 24 jury what you mean? Did you pull out and pass it, or did you  
02:20:33 25 pass it as it was coming at your direction?

02:20:36 1 A. So I was traveling north on Route 250 and the black Jeep  
02:20:41 2 was traveling in the southbound lane on Route 250. When I  
02:20:46 3 witnessed the vehicle, that's where I -- when I witnessed it I  
02:20:49 4 attempted to start turning around, I turned my lights on  
02:20:52 5 because I didn't want to pull into oncoming traffic, and as I  
02:20:55 6 did so, I witnessed the vehicle swerve into my lane of traffic  
02:21:01 7 or the northbound lane, almost striking a vehicle to go around  
02:21:04 8 another vehicle that was in front of him in the southbound  
02:21:09 9 lane.

02:21:09 10 Q. What did you do after the Jeep, just as you described,  
02:21:13 11 swerved into oncoming traffic?

02:21:14 12 A. That's when I actually started to radio back and forth  
02:21:18 13 with Deputy Mundell.

02:21:19 14 Q. Okay. Let's -- what's the time of the next clip then?

02:21:25 15 A. Next clip is going to be 145159.

02:21:31 16 MS. DURST: Mr. Carroll, could we play that, please?

02:21:32 17 (Playing radio clip.)

02:21:36 18 Q. Who was that?

02:21:36 19 A. That was me.

02:21:37 20 Q. When you say, "I believe I jumped him up." What were you  
02:21:40 21 meaning?

02:21:41 22 A. Deputy Wheeler had previously lost sight of Mr. Rhoades  
02:21:47 23 during his pursuit, which is why we were still searching that  
02:21:50 24 area for him. When I said I jumped him back, I had located  
02:21:54 25 Mr. Rhoades, or he was attempting to flee from us again.

02:21:58 1 Q. Where had you located him at that point? When you say  
02:22:03 2 jumped him up, is that when you saw --  
02:22:04 3 A. That was -- that was when I saw him on the road and all  
02:22:07 4 of that.  
02:22:07 5 Q. Okay. Okay. Let's go to the next clip. What is the  
02:22:10 6 time of that clip?  
02:22:11 7 A. Next clip is going to be 145210.  
02:22:11 8 MS. DURST: Let's play that, Mr. Carroll.  
02:22:21 9 (Playing radio clip.)  
02:22:21 10 A. Sounded like Deputy Wheeler saying "copy."  
02:22:24 11 Q. To your transmission that you had just jumped him up?  
02:22:28 12 A. Yeah.  
02:22:28 13 Q. Okay. What is time of the next clip?  
02:22:31 14 A. 145226.  
02:22:37 15 MS. DURST: Let's play that, Mr. Carroll.  
02:22:43 16 (Playing radio clip.)  
02:22:43 17 A. Could you play that one again? I didn't get a good --  
02:22:43 18 (Playing radio clip.)  
02:22:51 19 A. That sounds like Deputy Minnick.  
02:22:58 20 Q. And were you able to tell what Deputy Minnick was saying?  
02:23:02 21 A. Could you play that one more time?  
02:23:07 22 (Playing radio clip.)  
02:23:07 23 A. "How far up are you, Dave?"  
02:23:09 24 Q. Okay. And did you believe that transmission was directed  
02:23:14 25 to you or someone else?

02:23:15 1 A. Yes.

02:23:15 2 Q. Okay. What's time of the next clip?

02:23:18 3 A. 145241.

02:23:23 4 MS. DURST: Mr. Carroll, please.

02:23:23 5 (Playing radio clip.)

02:23:27 6 Q. Who is that?

02:23:27 7 A. That was me.

02:23:28 8 Q. And when you say you got to the first turn, what were you

02:23:31 9 meaning as you were saying over the radio?

02:23:34 10 A. So what had happened was we had begun pursuing him down

02:23:38 11 East Run Road, we were following that road -- it's part hard

02:23:42 12 top and it's also part gravel, so it left a dust trail and we

02:23:45 13 were following the dust trail out East Run and just if you go

02:23:49 14 down the hill when you turn on East Run from the 250 side,

02:23:52 15 there is a church and then there is a road to the left that

02:23:55 16 cuts up the hill called Parrish Run. It's all gravel.

02:23:59 17 We had followed the trail up there and the first turn,

02:24:02 18 it's a very sharp turn. It's like a switchback is where we

02:24:08 19 got to whenever dust trail stopped.

02:24:10 20 Q. Okay. And so that's what you were just referring to in

02:24:15 21 that radio transmission?

02:24:16 22 A. Yes.

02:24:17 23 Q. Got to the first turn?

02:24:20 24 A. Yes, ma'am.

02:24:20 25 Q. Okay. What is the time of the next clip?



02:24:21 1 A. 145246.

02:24:25 2 MS. DURST: Okay. Mr. Carroll, please.

02:24:30 3 (Playing radio clip.)

02:24:30 4 Q. Who is that?

02:24:31 5 A. That was me.

02:24:32 6 Q. What are you referring to over this transmission?

02:24:35 7 A. I was stating -- I was relaying that I wasn't sure if he

02:24:40 8 continued up Parrish Run or if he cut off on one of the roads

02:24:43 9 that was there in that turn.

02:24:45 10 Q. Okay. Let's go to the time of the next clip, please.

02:24:48 11 A. 145304.

02:24:53 12 MS. DURST: Okay, Mr. Carroll.

02:24:53 13 (Playing radio clip.)

02:24:59 14 Q. And we've seen some of the photographs. What trail are

02:25:06 15 you referring to when you say it looks like he cut off the

02:25:09 16 trail on East Run?

02:25:10 17 A. I misspoke that day, it's actually Parrish Run that we

02:25:18 18 have established today, but it would have the access road to

02:25:20 19 the well site that we have seen in the pictures today.

02:25:23 20 Q. And what time is that clip again?

02:25:25 21 A. It appears that that was 145304.

02:25:31 22 Q. Okay. So that's 2:53 and 4 seconds?

02:25:34 23 A. Yes, ma'am.

02:25:35 24 Q. Okay. And let's play next clip. What is the time of the

02:25:43 25 next clip? Sorry. What's the time of the next clip?

02:25:44 1 A. 145315.

02:25:46 2 MS. DURST: Okay. Let's go ahead and play that,

02:25:48 3 Mr. Carroll.

02:25:55 4 (Playing radio clip.)

02:25:55 5 Q. Who was that?

02:25:56 6 A. That was Deputy Mundell.

02:25:59 7 Q. Do you know what he's referring to when he's saying

02:26:04 8 "Where at on the split?"

02:26:06 9 A. I'm not positive. He may be talking about the split for

02:26:10 10 East Run, Parrish Run.

02:26:12 11 Q. Okay. What's the time of the next clip?

02:26:15 12 A. 145320.

02:26:19 13 MS. DURST: All right. Let's go ahead and play that,

02:26:22 14 please.

02:26:22 15 (Playing radio clip.)

02:26:26 16 Q. And what is this clip?

02:26:27 17 A. That was me.

02:26:29 18 Q. And what are you reporting over the radio?

02:26:32 19 A. That shots had been fired.

02:26:36 20 Q. And by this time, had you fired seven rounds?

02:26:42 21 A. Yes, ma'am, I just finished using my weapon and then had

02:26:47 22 reported over the radio.

02:26:48 23 Q. Okay. And then let's play the last -- what's the time of

02:26:52 24 the last clip, please?

02:26:55 25 A. 145327.

02:26:58 1 MS. DURST: Okay. Mr. Carroll.

02:27:05 2 (Playing radio clip.)

02:27:05 3 Q. And who is that?

02:27:06 4 A. That was -- that was me.

02:27:07 5 Q. And what were you asking over the radio there?

02:27:09 6 A. I was asking for dispatch to send an ambulance.

02:27:16 7 Q. Okay. Generally, Deputy Forsyth, these transmissions,

02:27:22 8 were you reporting some of these things simultaneously as they

02:27:29 9 were occurring?

02:27:29 10 A. Some of them, yes.

02:27:30 11 Q. Okay. So let's back up again. When you located -- when

02:27:38 12 you first saw the Jeep, were you on 250?

02:27:42 13 A. Yes, ma'am.

02:27:43 14 Q. Okay. Can you describe what happened -- let me back up.

02:27:50 15 Which direction were you traveling on 250?

02:27:53 16 A. I was traveling northbound, so I was traveling from the

02:27:56 17 Fairmont to Mannington.

02:27:57 18 Q. Okay. In which direction was the Jeep traveling?

02:28:00 19 A. The Jeep was traveling southbound, so from Mannington

02:28:04 20 back towards Fairmont.

02:28:05 21 Q. When you saw the Jeep, did you take any action at that

02:28:09 22 time?

02:28:10 23 A. Yes, I kicked my lights on and then attempted to turn

02:28:16 24 around to get behind the vehicle, I was going to try to

02:28:19 25 identify driver.

02:28:20 1 Q. Did the Jeep -- did you see the Jeep take any action in  
02:28:24 2 response?

02:28:24 3 A. Yes. That's when I saw it swerve into oncoming traffic  
02:28:28 4 almost striking another vehicle to go around the vehicle that  
02:28:31 5 was in front of it.

02:28:33 6 Q. Okay. So just, I guess, to make sure that I understand,  
02:28:43 7 Parrish Run is where the access road to the gas well site cuts  
02:28:48 8 off of, am I understanding that correctly?

02:28:50 9 A. Yes. The access road is off of Parrish Run.

02:28:53 10 Q. Okay. So let's talk about when you pull into the access  
02:28:59 11 road.

02:28:59 12 A. Yes, ma'am.

02:29:00 13 Q. Okay. When you pull into the access road, do you see the  
02:29:06 14 Jeep?

02:29:07 15 A. Yes. As I -- well, the initial access road you could not  
02:29:11 16 see the Jeep. As I pulled out into the opening where the gas  
02:29:15 17 well was is when I witnessed the Jeep off to my left.

02:29:20 18 Q. Did you come across any other vehicles in between when  
02:29:24 19 you were pulling onto Parrish Run and when you got into the  
02:29:29 20 access road?

02:29:30 21 A. Yes, ma'am. So in that turn at Parrish Run in that sharp  
02:29:35 22 switchback, there was actually a little girl in a -- it was  
02:29:38 23 like a champagne colored Ford Focus, one of the real little  
02:29:45 24 subcompact Fords. So I had to let her get down -- you know,  
02:29:49 25 get out of the turn before I actually turned around.

02:29:51 1 Q. And so then what did you do after her car was out of the  
02:29:54 2 way?

02:29:54 3 A. After her car was out of the way is when I got turned  
02:29:58 4 around and went into the access road.

02:30:00 5 Q. Okay. When you entered the access road can you tell the  
02:30:03 6 jury what you recall seeing?

02:30:06 7 A. It was a grown up area. As I pulled into the access road  
02:30:11 8 where it opened up, the Jeep was setting perpendicular to my  
02:30:19 9 car off to the left and drove towards my car almost striking  
02:30:23 10 it, and that's when I, in haste, I was trying to get out of  
02:30:29 11 the vehicle, you know, because I was responding to assisted  
02:30:32 12 pursuit, I'm sure that my engine and transmission, everything  
02:30:35 13 was hot, I don't know -- you know, I don't know if I just  
02:30:37 14 didn't get it up into gear or didn't want to go into park or  
02:30:41 15 what, whenever I was doing that, but it didn't go into park,  
02:30:44 16 so I exited my vehicle and went to get to the rear of my  
02:30:47 17 cruiser to use it as cover, and the vehicle kept moving  
02:30:51 18 forward so it left me exposed in the middle of the road.

02:30:54 19 Q. When you pulled into the access road, did you immediately  
02:30:58 20 exit your vehicle?

02:30:59 21 A. It wasn't immediate.

02:31:01 22 Q. If it wasn't immediate, can you tell the jury what was  
02:31:06 23 happening in that time between when you pulled into the access  
02:31:09 24 road and when you actually exited your vehicle?

02:31:12 25 A. Yes, ma'am. So that's -- as I said when I got into where

the clearing opened up, the vehicle was setting perpendicular to me, and it came -- like came forward and almost struck my vehicle. So as that happened, the vehicle, the black Jeep was attempting to do like a quasi three-point turn and get angled and that's when I had taken the chance to get out of my vehicle and get to the rear of it.

Q. The photo -- some of the photos that we have seen here today, Deputy Forsyth, do any of those show the position of the vehicle where it was when you first saw it?

A. It's possible there is some that show, like, the ground where the vehicle was at.

Q. The final resting place of the Jeep in those photographs, was that the position of the Jeep when you first pulled into the access road?

A. No, ma'am, it was not.

MS. DURST: Your Honor, may I approach and get Defendant's Exhibit No. 1?

THE COURT: You may.

MS. DURST: Your Honor, may I hand these to Deputy Forsyth, please?

THE COURT: Please.

MS. DURST: Thank you.

BY MS. DURST:

Q. Deputy Forsyth, I have handed you what has been previously admitted as Defendants No. 1. And there are 30

photographs there. What I would like to you do, if you could, Deputy Forsyth, is look through those photographs, and see if you can locate any that you would be able to point to the jury where the positioning of the Jeep would have been when you first pulled into the access road.

And if you can find a photo to that effect, there is a number in the bottom right-hand corner, if you can identify that number, then we can have Mr. Carroll pull the photo up onto the screen.

A. Yes, ma'am. Okay. If you can go to number 22.

Q. Is that photograph on the screen, Deputy Forsyth, is that the one you're looking at?

A. Yes, ma'am.

Q. Okay. And what about photograph number 22, can you show the jury where the Jeep would have been when you initially pulled into the access road?

A. Okay. So if you see where the tire on the actual Jeep is, at that --

Q. Let me stop you there. Which tire?

A. I'm sorry, the fifth tire, the spare.

Q. Okay.

A. There is ground disturbance or a clearing right there, I believe that that would be roughly where it was at and it was parked perpendicular to where I was. So it was like in a T fashion as I was coming in.

02:34:38 1 Q. Where was the back of the Jeep versus the front of the  
02:34:42 2 Jeep when you first pulled into the access?

02:34:43 3 A. The front would have been pointed towards me and the back  
02:34:46 4 of it then backed into the brush.

02:34:48 5 Q. Okay. All right. At that point, then, when you pull  
02:34:52 6 into the access road, what does the Jeep do?

02:34:57 7 A. That is when the Jeep -- when I started in is when the  
02:35:01 8 Jeep came forward and almost struck my vehicle.

02:35:04 9 Q. Struck your vehicle where?

02:35:06 10 A. It would have been on or around the front driver side  
02:35:10 11 quarter panel, front door, like right around the A frame or  
02:35:14 12 the A pillar.

02:35:14 13 Q. Then what happened?

02:35:16 14 A. That's when he started to back up and do like a quasi  
02:35:19 15 three-point turn, and that's when I started to exit my  
02:35:22 16 vehicle.

02:35:22 17 Q. Okay. When you exited your vehicle, then, what was your,  
02:35:29 18 I guess, intention when you were exiting your vehicle, what  
02:35:33 19 was your plan?

02:35:34 20 A. I was trying to get to the rear of my vehicle for cover  
02:35:37 21 and attempt to stop this fleeing vehicle.

02:35:40 22 Q. When you exit your vehicle, did you -- did you realize at  
02:35:45 23 that point in time that your cruiser was not in park?

02:35:49 24 A. No, ma'am, I didn't. In my haste to get out of the  
02:35:53 25 vehicle, again, I don't know if because the transmission was



1 hot that I couldn't get it into park, or I knocked the gear  
2 shift up, but it didn't go into -- it didn't go into park, I  
3 didn't get it there.

4 Q. Did you see your cruiser moving forward?

5 A. In my peripheral, I just remember trying to get to the  
6 back of it and it wasn't there.

7 Q. Let me stop there, and let me ask you something. Before  
8 you became involved in this pursuit of Philip Rhoades, had you  
9 had any personal or professional dealings with him yourself?

10 A. No, ma'am. None.

11 Q. Okay. So you get out of your cruiser, and then what  
12 happens?

13 A. I had gotten out of my vehicle, I drew my weapon, I began  
14 to give Mr. Rhoades loud verbal commands, stop the vehicle,  
15 show me your hands, things of that nature.

16 Q. Did Mr. Rhoades comply with those commands?

17 A. No, ma'am, he did not. He continued to try to angle the  
18 vehicle or to maneuver the vehicle in the clearing there.

19 Q. Did Mr. Rhoades ever comply with the verbal commands that  
20 you gave?

21 A. No, ma'am, he did not.

22 Q. At one point in time, Deputy Forsyth, did you begin  
23 firing your weapon?

24 A. The vehicle had -- after the vehicle had started coming  
25 towards me and I realized that I was about to be run over, I

02:37:18 1 was going to get hit by the vehicle.

02:37:21 2 Q. Do you recall how many shots you fired?

02:37:26 3 A. I believe it was seven rounds.

02:37:29 4 Q. At that point in time, did you know that you had fired  
02:37:32 5 seven rounds?

02:37:32 6 A. So in my training, we're taught at times to do what is  
02:37:40 7 called a tac reload. I began to do a tac reload after  
02:37:44 8 shooting. But I did not. I chose not to. Instead I moved  
02:37:49 9 forward and cleared the passenger area of the vehicle to make  
02:37:55 10 sure there was no other weapons and then began to render aid.

02:37:58 11 Q. You've heard Lieutenant Branham's testimony with regard  
02:38:08 12 to the information you provided as part of his investigation,  
02:38:11 13 true?

02:38:11 14 A. Yes.

02:38:12 15 Q. Do you recall telling Sergeant Branham that you had seen  
02:38:17 16 the person inside the Jeep doing anything?

02:38:21 17 A. Yes, ma'am.

02:38:22 18 Q. What did you -- what did you see or what did you notice  
02:38:26 19 and at what point in time did you notice this?

02:38:29 20 A. So as he -- as he was backing up and right before the  
02:38:32 21 vehicle started to come towards me, the subject inside the  
02:38:35 22 vehicle was reaching over the, like, the console into either  
02:38:41 23 floorboard or the passenger side area of the front of the  
02:38:44 24 Jeep. Almost as if he were, like, trying to hide down behind  
02:38:48 25 the dash or reach down into the floorboard to get something.

Q. Is it fair to say, Deputy Forsyth, that you never actually saw Philip Rhoades with any kind of gun, knife, or anything like that. Is that fair?

A. That's correct. I didn't see him with a gun or a knife or anything like that.

Q. But had heard over the radio that he may be armed?

A. Yes, ma'am.

Q. Deputy Forsyth, can you tell this jury why you fired your weapon at that Jeep?

A. Because I thought I was going to die. I thought that I was not going to make it home to my wife and my three children.

Q. I think Mr. Prince -- are you okay, Deputy Forsyth?

A. (No audible answer.)

Q. I think Mr. Prince had asked you and I think it had come up in your deposition about whether you knew how much time had elapsed during your interactions with the Jeep.

Do you recall that?

A. Yes, ma'am, I do.

Q. Okay. Even as we sit here today, even looking at the radio traffic, the time of that, are you still able to tell the jury what you recall versus what is actually on the radio traffic?

Does that make sense? Aside from seeing the timing of when those radio transmissions were made, would you be able to

02:40:29 1 tell the jury how much time elapsed if you had not seen those  
02:40:34 2 times?

02:40:34 3 A. No, ma'am.

02:40:35 4 Q. Did you perceive what you believed to be a threat of  
02:40:40 5 imminent danger to you when you fired your weapon?

02:40:44 6 A. Yes, ma'am.

02:40:45 7 Q. What was that threat?

02:40:47 8 A. The vehicle driving at me.

02:40:49 9 Q. When did you actually stop firing your weapon?

02:40:53 10 A. When the -- when the vehicle stopped.

02:40:56 11 Q. After the shooting, can you tell the jury, we've heard  
02:41:07 12 your transmission where you came over and said, "Man, shots  
02:41:10 13 fired, shots fired," and then radioed for an ambulance, can  
02:41:14 14 you tell the jury what you did after that?

02:41:16 15 A. After that, I -- there was some more radio traffic that  
02:41:22 16 we didn't play, dispatch had asked me, like, they knew that we  
02:41:26 17 needed 1050, they knew we needed an ambulance, and I had  
02:41:29 18 checked on Corey to make sure that he was okay. He was okay.

02:41:32 19 Dispatch asked again if all officers were okay. We said  
02:41:36 20 yes. At that point, we cleared the passenger area of the  
02:41:40 21 vehicle, Mr. -- I moved towards the vehicle and saw  
02:41:45 22 Mr. Rhoades inside the vehicle slumped over the center  
02:41:50 23 console. At that point I believe I asked Deputy Love to get  
02:41:54 24 gloves so that we could pull him out of the vehicle to render  
02:41:58 25 aid.

02:41:58 1 Q. While you were firing your weapon, do you know where  
02:42:01 2 Deputy Love actually was?

02:42:05 3 A. No, ma'am. I know initially that I had thought that he  
02:42:08 4 was behind me, but I later come to find out that he was not  
02:42:12 5 because he tried to take care of the vehicle that was still  
02:42:15 6 moving.

02:42:16 7 Q. Okay. So you said you cleared the passenger side of the  
02:42:22 8 Jeep. What --

02:42:24 9 A. Passenger, I'm sorry, let me -- the passenger area. That  
02:42:27 10 would be, so I do this from time to time I speak in police  
02:42:32 11 officers, so I apologize. That would be any area where people  
02:42:36 12 sit inside their vehicle. So where Mr. Rhoades was sitting,  
02:42:41 13 that area, his immediate area where he sat.

02:42:44 14 Q. So the area where seats would be inside the Jeep?

02:42:48 15 A. Yes, ma'am.

02:42:49 16 Q. Okay. Okay. And at some point in time -- well, let me  
02:42:54 17 back up. You said that Mr. Rhoades was slumped over the  
02:42:58 18 console?

02:42:58 19 A. Yes, ma'am. He was leaning forward and over the console.

02:43:02 20 Q. Is that the area where the gear shift was as well?

02:43:06 21 A. Yes, ma'am.

02:43:07 22 Q. Do you know, did you remove Mr. Rhoades from the Jeep by  
02:43:17 23 yourself, did Deputy Love assist you?

02:43:20 24 A. I couldn't say for certain, I believe Deputy Love  
02:43:23 25 assisted me.

02:43:24 1 Q. Okay. When you took Mr. Rhoades from the Jeep, did you  
02:43:30 2 find any pulse?

02:43:32 3 A. After taking him out of the Jeep, no, ma'am, I didn't --  
02:43:36 4 I didn't find a pulse.

02:43:37 5 Q. What did you do when you removed him from the Jeep?

02:43:40 6 A. We removed him from the Jeep and laid him on the ground,  
02:43:44 7 didn't find a pulse and then I began to administer CPR.

02:43:48 8 Q. Let me ask this, what was -- if anything, was Deputy Love  
02:43:54 9 doing at that time?

02:43:56 10 A. I don't really recall because I know I had him get  
02:44:00 11 gloves, I was focused on continuing to do CPR, and anyone who  
02:44:07 12 has done that, that is a pretty involved process.

02:44:09 13 Q. While you were performing CPR, did you ever find a pulse?

02:44:13 14 A. I only checked that first time and then by the time I was  
02:44:17 15 relieved from doing that whenever medical personnel got there.

02:44:21 16 Q. Fair enough. You heard Lieutenant Branham's testimony  
02:44:24 17 with regard to his investigation and when he got there the  
02:44:29 18 Jeep, he said, was running and appeared to be in gear. You've  
02:44:32 19 heard that testimony?

02:44:33 20 A. Yes, ma'am.

02:44:33 21 Q. Okay. Do you recall if the Jeep was still running when  
02:44:39 22 you removed Mr. Rhoades?

02:44:41 23 A. I don't recall if it was running or not.

02:44:44 24 Q. Do you have any reason to dispute Lieutenant Branham's  
02:44:47 25 statement that the Jeep was still running?

02:44:51 1 A. No, ma'am, not that it was still running.

02:44:54 2 Q. Do you have any reason to dispute that the Jeep was still

02:44:57 3 running and appeared to be in gear?

02:44:59 4 A. Yes, ma'am.

02:45:00 5 Q. Why?

02:45:01 6 A. Because that's -- it's not possible for a Jeep to be in

02:45:08 7 gear and running without someone being in the vehicle.

02:45:14 8 Q. We heard Lieutenant Branham say he doesn't know how to

02:45:17 9 and has never operated a manual transmission. Have you ever

02:45:21 10 operated a manual transmission?

02:45:21 11 A. Yes, ma'am.

02:45:21 12 Q. Have you ever owned a manual transmission vehicle?

02:45:25 13 A. Yes, ma'am.

02:45:25 14 Q. How many over the years have you owned?

02:45:30 15 A. Personally, I've owned at least one and my parents owned

02:45:33 16 vehicles, you know, my -- that's what I was taught to drive on

02:45:37 17 was a standard.

02:45:39 18 Q. Do you know then, Deputy Forsyth, if it's possible to

02:45:43 19 take a manual transmission out of gear without the clutch

02:45:47 20 being pushed in?

02:45:49 21 A. Yes.

02:45:49 22 Q. Is it possible to put a Jeep -- a manual transmission

02:45:53 23 into gear if the clutch isn't pushed in?

02:45:57 24 A. Not easily.

02:46:15 25 Q. We've heard some testimony from Lieutenant Branham. Mr.

Prince actually asked you some questions about the statement that you provided to Sergeant Branham.

Do you recall that?

A. Yes, ma'am.

Q. Okay. Did you -- did anyone tell you not to provide a statement to lieutenant -- he would have then been sergeant, now Lieutenant Branham at the hospital?

A. No, ma'am, I don't recall anyone ever telling me not to give a statement to him.

Q. When you went to give your statement to Sergeant Branham, did you take an attorney?

A. No, ma'am.

Q. Were there any questions you refused to answer?

A. No, ma'am.

Q. Why did you take a written statement with you?

A. So part of my job when I do anything that I do, we document -- right? -- that's what we do. We document things so that we can recall. We document things so that we can remember later.

I wanted to have something to clearly understand the facts that I remembered from that day in front of me whenever I gave my statement.

Q. Did anyone help you prepare that statement?

A. No, ma'am.

Q. Deputy Forsyth, I want to ask you a couple questions.



02:47:42 1 You heard questioning of Lieutenant Branham about you washing  
02:47:47 2 your hands and --  
02:47:48 3 A. That's correct.  
02:47:49 4 Q. -- with regard to the gunshot residue test, right?  
02:47:52 5 A. Yes.  
02:47:53 6 Q. Did you ever dispute or deny that you were the one that  
02:47:59 7 had fired your weapon into the Jeep?  
02:48:02 8 A. No, ma'am.  
02:48:02 9 Q. Starting off his questions, Mr. Prince asked you about a  
02:48:09 10 police officer violating a citizen's constitutional rights.  
02:48:13 11 Do you recall his questions initially?  
02:48:15 12 A. Yes, ma'am.  
02:48:16 13 Q. And your actions on August 2nd, 2017, Deputy Forsyth, do  
02:48:21 14 you believe that you violated Philip Rhoades' constitutional  
02:48:26 15 rights?  
02:48:26 16 A. No, ma'am.  
02:48:26 17 Q. He also asked you -- well, let me back up. Why?  
02:48:31 18 A. He was attempting to kill me.  
02:48:34 19 Q. You were also asked questions about a police officer  
02:48:37 20 being required to comply with the policies and procedures of  
02:48:41 21 its department.  
02:48:42 22 You agree with that, right?  
02:48:43 23 A. Yes.  
02:48:44 24 Q. Do you believe that you violated any policy or procedure  
02:48:48 25 of the Marion County Sheriff's Department in your actions on

02:48:52 1 August 2nd, 2017?

02:48:53 2 A. No, ma'am. I do not.

02:48:55 3 MS. DURST: Your Honor one moment, please.

02:48:57 4 THE COURT: Certainly.

02:49:07 5 MS. DURST: Your Honor, I have no further questions  
02:49:09 6 of Defendant Forsyth.

02:49:10 7 THE COURT: Thank you. Mr. Prince, if you'll give  
02:49:12 8 Ms. Durst a moment. Thank you.

02:49:39 9 FURTHER CROSS-EXAMINATION

02:49:39 10 BY MR. PRINCE:

02:49:39 11 Q. Officer Forsyth, you testified that you saw Philip  
02:49:45 12 reaching towards the center console; is that right?

02:49:48 13 A. He was reaching into, like, passenger side floorboard or  
02:49:52 14 down in the center console area, yes.

02:49:55 15 Q. You heard the medical examiner testify, didn't you? He  
02:49:58 16 was shot on the right side of his face?

02:50:01 17 A. Yes, sir.

02:50:02 18 Q. Isn't that -- wouldn't that be more consistent with him  
02:50:07 19 leaning away from the console perhaps to take cover from your  
02:50:10 20 fire?

02:50:10 21 A. Sir, so when the vehicle started coming at me he was down  
02:50:16 22 -- he was down underneath the dashboard. As I was firing, I  
02:50:21 23 did witness the silhouette pop up. Again, I don't know what  
02:50:24 24 he was doing inside the vehicle. I don't know if he was  
02:50:28 25 struck by glass. I don't know if he was trying to change

gears. I don't know.

But yes, when the vehicle -- I testified that when the vehicle started coming towards me he was down in behind the dash or reaching into the floorboard.

Q. Right. I think the point is that you don't know, right?

A. Excuse me?

Q. I think the point is you don't know, right?

A. I don't know what, sir?

Q. You just testified you don't know what Philip was doing inside the vehicle and you don't know, do you?

A. I don't know what he was doing inside the vehicle.

Q. Now, let me ask you this. Do you shoot every occupant of a vehicle that reaches towards the console?

A. No, sir.

Q. Now, you couldn't read the screen in front of you without your glasses, could you? I notice you put your glasses on?

A. Not today, sir, I have a problem with computer screens sometimes, that's why I have glasses. I set behind a desk a lot now.

Q. You couldn't read the screen without your glasses on, right?

A. Yes, sir, I had a hard time reading the computer screen.

Q. Corey Love's dad -- you know Corey Love, right?

A. Yes, sir.

Q. Corey Love's dad was your boss on August 2nd, 2017,

02:51:39 1 wasn't he?

02:51:41 2 A. I mean, if you're asking was he -- I mean, he is over me  
02:51:45 3 in the department, yes.

02:51:46 4 Q. Right. And Corey Love's dad is still your boss today,  
02:51:52 5 isn't he?

02:51:53 6 A. Yes, sir. He is still employed with the sheriff's  
02:51:56 7 department.

02:52:02 8 Q. Now, you testified that you had enough time to think  
02:52:10 9 about doing a tac reload, that's short for tactical reload,  
02:52:16 10 isn't it?

02:52:16 11 A. I believe that it is.

02:52:16 12 Q. Yeah. So you're shooting at this Jeep and you have  
02:52:19 13 enough time to think about reloading so you can shoot some  
02:52:25 14 more, but not enough time to take a step to get out of the way  
02:52:29 15 of this Jeep that's coming towards you?

02:52:32 16 A. That was after -- after the incident and I've trained to  
02:52:37 17 do tac reloads a lot. I don't particularly train to dive out  
02:52:41 18 of the way of a vehicle on a regular basis, sir.

02:52:43 19 Q. Not trained to take a step, is that your testimony?

02:52:48 20 A. No, sir. I just testified that I train often to do tac  
02:52:54 21 reloads, I don't train basic maneuvers in front of vehicles on  
02:52:58 22 a regular basis.

02:52:59 23 Q. Trained to shoot, not trained to step out of the way of a  
02:53:02 24 running vehicle, in your opinion, right?

02:53:04 25 A. No, sir, I've explained myself.

Q. You testified that you wanted to go home to your children, but you would agree, wouldn't you, Officer, that officers with children aren't allowed to just shoot their firearms with reckless abandon, are they?

A. Sir, I didn't shoot with reckless abandon.

Q. You would agree with me, wouldn't you, Officer, that officers with children are not allowed to shoot their firearms with reckless abandon, wouldn't you?

A. I didn't shoot with reckless abandon.

Q. You would agree with me, wouldn't you, Officer Forsyth, that police officers that have children still are not allowed to shoot their firearms with reckless abandon, are they?

A. While I do agree with you, that's not what I did.

Q. And you agree with me, Officer, that the use of force policy in Marion County does not say officers with children are allowed to shoot first and ask questions later, does it? Not in there?

A. That's not in there. That's also not what I did, sir.

Q. And you would agree with me, Officer, that the United States Constitution does not say that the rights contained herein do not apply if the officer has children at home, right?

A. I don't believe that is in the Constitution, sir.

Q. And you don't have any explanation for this jury as to how this Jeep moved in neutral, so you come in court to

1 testify and you use your children as a justification for  
2 killing Philip Rhoades, don't you?

3 MS. DURST: Objection, Your Honor, badgering the  
4 witness.

5 THE COURT: Overruled. You may answer the question,  
6 Mr. Forsyth.

7 THE WITNESS: Could you restate the question, sir.  
8 BY MR. PRINCE:

9 Q. You don't have any explanation as to how this Jeep moved  
10 while it was in neutral, so instead you come to court today  
11 and you resort to using your own children as an excuse, as  
12 some sick justification for killing Philip Rhoades?

13 A. No, Mr. Prince, I'm not using my children for anything,  
14 I'm explaining to you what was going on that day. And I've  
15 attempted to give you what you asked for in speculation of how  
16 that Jeep may have ended up in neutral. I don't know how it  
17 ended up in neutral, but what I do know is that that vehicle  
18 was driving at me that day. I know that.

19 MR. PRINCE: We're finished with this witness, Your  
20 Honor?

21 THE COURT: Understood. Anything further, Ms. Durst?

22 MS. DURST: I don't have anything further, Your  
23 Honor.

24 THE COURT: Mr. Forsyth, you may step down. You can  
25 leave those exhibits there, sir, we will take care of tidying

02:55:58 1 up.

02:55:58 2 MS. DURST: Do you want him to leave the exhibits,  
02:55:58 3 Your Honor?

02:56:01 4 THE COURT: We'll take care of the exhibits. Leave  
02:56:03 5 those there, thank you, sir.

02:56:15 6 Ladies and gentlemen, it strikes me we are at the  
02:56:18 7 appropriate time this afternoon to take our afternoon break so  
02:56:20 8 we'll do that now. We'll be ready to go again at ten after  
02:56:25 9 3:00. My usual instructions still apply.

02:56:28 10 Please continue to refrain from discussing this case with  
02:56:30 11 anyone, that includes amongst yourselves or with any of your  
02:56:33 12 fellow jurors, and also please continue to refrain from any  
02:56:36 13 independent investigations. Not only with respect to this  
02:56:38 14 case, any of the issues we've discussed so far.

02:56:40 15 With that, we'll see you again here in 15 minutes. Thank  
02:56:43 16 you all very much.

02:57:13 17 (The jury exited the courtroom at 2:57 p.m.)

02:57:13 18 THE COURT: Please be seated. Who will be the next  
02:57:15 19 witness?

02:57:16 20 MR. UMINA: Your Honor, we are actually going to  
02:57:19 21 play -- we just got the designations between the two of us  
02:57:24 22 from Corey Love. That will be --

02:57:27 23 THE COURT: Well, do we need to take up the  
02:57:30 24 objections?

02:57:31 25 MR. UMINA: We worked it out. We have been

02:57:33 1 conferring.

02:57:34 2 THE COURT: What a pleasant, welcome and heartwarming  
02:57:37 3 surprise. I withdraw my inquiry then. Thank you all for  
02:57:41 4 doing that. Genuine appreciation from the bench.

02:57:46 5 MS. DURST: Your Honor, just for the record.

02:57:46 6 THE COURT: Yes.

02:57:47 7 MS. DURST: I think the video is about an hour after  
02:57:49 8 it was edited, just to give the Court a heads up.

02:57:52 9 THE COURT: Thank you. That was going to be my next  
02:57:55 10 point. I anticipate a hard stop at 4:30, 4:45 today so if we  
02:58:01 11 play that video, that will probably get us there.

02:58:03 12 MR. UMINA: I was just going to say after that I  
02:58:08 13 believe Deputy Parker is here, or at least on his way. Really  
02:58:14 14 his testimony will be very short, specifically about Corey  
02:58:18 15 Love. So and then after that, Rick Rhoades. So in the event  
02:58:25 16 we still have, you know, 30, 45 minutes, we can likely get  
02:58:29 17 through both Parker and Mr. Rhoades.

02:58:31 18 THE COURT: Okay. All right. We'll play it by ear.  
02:58:34 19 Yes, Mr. Carroll?

02:58:34 20 MR. CARROLL: I do anticipate offering an objection  
02:58:37 21 to Eric Parker's testimony. I can appreciate that the  
02:58:41 22 plaintiff may want to play the deposition first, but I just  
02:58:43 23 wanted to make -- the trial testimony first, but I just wanted  
02:58:47 24 to make the Court aware we plan to object to Eric Parker.

02:58:50 25 Based on the Court's ruling -- ruling on the motions in



02:58:54 1 limine.

02:58:55 2 THE COURT: Okay. All right. Well, we can address  
02:58:57 3 that after we play the video of Mr. Love.

02:59:00 4 Anything else we need to take up at this point?

02:59:03 5 MR. UMINA: No, Your Honor. Only thing we just need  
02:59:04 6 to, in the event just test that hearing.

02:59:08 7 THE COURT: Okay. Yeah, Madam Clerk, can I impose on  
02:59:11 8 you to do that? Thank you.

02:59:12 9 Ms. Durst, Mr. Carroll, anything further we need to take  
02:59:15 10 up at this point?

02:59:15 11 MS. DURST: I don't think so, Your Honor, thank you.

02:59:16 12 THE COURT: Outstanding. We'll stand at ease until  
02:59:19 13 ten after. Thank you.

03:11:22 14 (A recess was taken from 2:59 p.m. until 3:11 p.m.)

03:11:22 15 THE COURT: Thank you. Anything else we need to take  
03:11:23 16 up at this point, Ms. Durst?

03:11:26 17 MS. DURST: No, Your Honor.

03:11:26 18 THE COURT: Okay. The plaintiffs are going to play  
03:11:28 19 Mr. Love's deposition next. Okay. All right. We can bring  
03:11:32 20 in our jury then, thank you.

03:13:25 21 THE COURT: Thank you. I owe everyone an apology for  
03:13:29 22 a number of reasons, but I neglected to prioritize this  
03:13:34 23 morning, make a more temperate climate in the courtroom, but  
03:13:37 24 we've put that request in so it's comfortable this afternoon,  
03:13:41 25 and you have my strongest promise that that will be taken care

03:13:47 1 of before we reconvene in the morning with my apologies.

03:13:52 2 It's my understanding, Mr. Umina, our next witness is  
03:13:55 3 Corey Love and he's going to appear by videotaped deposition?

03:13:58 4 MR. UMINA: Yes, Your Honor, this is joint  
03:14:00 5 designation between myself and Ms. Durst.

03:14:03 6 THE COURT: All right. Understood. Ladies and  
03:14:04 7 gentlemen of the jury, our next witness will testify by  
03:14:07 8 previously recorded videotaped deposition. It will be  
03:14:11 9 displayed on the monitors in the jury box as well as our big  
03:14:15 10 screen here. Madam Clerk is going to dim the lights slightly  
03:14:19 11 so you can see that a little bit better. But whenever counsel  
03:14:19 12 is ready to play, you may.

03:14:19 13 (Videotaped deposition of Corey Love played for the  
04:12:45 14 jury.)

04:12:45 15 THE COURT: Can I ask counsel to approach for one  
04:12:55 16 second?

04:12:55 17 (Bench conference outside the hearing of the jury.)

04:16:07 18 THE COURT: You wanted to call Mr. Parker next; is  
04:16:10 19 that correct?

04:16:10 20 MR. UMINA: Your Honor, I have about three questions  
04:16:12 21 for him. Specifically, as Mr. Love just testified, Parker was  
04:16:17 22 his training officer. This is from end of phase one, his  
04:16:21 23 evaluation on 7-22-2017. It was twelve days before the  
04:16:27 24 shooting and specifically what he had observed about him, his  
04:16:30 25 weaknesses as an officer. That is it --

04:16:33 1 THE COURT: Is this Mr. Love?

04:16:34 2 MR. UMINA: About Mr. Love specifically, so what I --  
04:16:36 3 this is evidence of Mr. Love -- he says he gets confused  
04:16:43 4 easily, can't follow basic instructions, and I don't recall  
04:16:46 5 the third one, but I believe that him getting confused easily,  
04:16:51 6 unable to follow basic instructions, and the third critique,  
04:16:57 7 those go directly to his credibility as a witness and him as a  
04:17:02 8 police officer, and specifically his ability to recall facts,  
04:17:06 9 and to even understand what is happening at the scene as  
04:17:09 10 described. And I think that the jury is entitled to hear  
04:17:13 11 that.

04:17:14 12 MR. CARROLL: Your Honor, I think we're talking about  
04:17:16 13 him in a position of a witness now. I mean, I know he is a  
04:17:18 14 police officer, but we are just going off of him and what he  
04:17:21 15 saw. This would be the same thing as pulling someone who  
04:17:23 16 works as a cashier or something else, and pull their  
04:17:26 17 employment file and going over their specific reviews. I  
04:17:30 18 don't think that there is anything of relevance here and  
04:17:32 19 especially now that the prior incidents are out.

04:17:34 20 I mean, there is no basis to talk about Corey Love's  
04:17:37 21 training. It is simply not relevant, and is not helpful to  
04:17:41 22 the jury with the issue before the Court.

04:17:42 23 MR. UMINA: Your Honor, I believe --

04:17:45 24 THE COURT: You believe it's relevant?

04:17:47 25 MR. UMINA: No, Your Honor. It's simply his

credibility, and it's character, as well. It's not specific.

THE COURT: All right. Non-party witness?

MR. UMINA: Yes.

THE COURT: Officer Parker? And I apologize, I don't remember his --

MR. UMINA: He was his FTO training officer and he had just talked about that, so he was assigned to Parker in the days leading up to this. And again, specifically this review was his end-of-phase one review, which occurred 12 days prior to the shooting.

THE COURT: And phases are what level you are within the sheriff's department; is that correct?

MR. UMINA: Within the FTO program. So my understanding is it is a field training officer program. It is a three-phase program and I think they are six-week increments. He had been on the job six weeks at the time. And again, it's simply his observations about Deputy Love as a person, and his ability to process information, see things. And again, it says he gets confused easily. We are talking about him being a witness to someone being shot to death here and he is a critical fact witness.

MR. CARROLL: Your Honor, we're not in a position where they are reviewing some psychologist's review or reviewing some specific purpose of telling whether or not he is confused or has a good memory. Those are employment

records. They are designed for the training in an FTO program, and are designed to keep track of his progress through the program and not to test his ability to recall.

THE COURT: Do we have this evaluation document?

MR. UMINA: I have it right here. I will grab it, Your Honor. Your Honor, I don't intend to offer this as evidence, simply that I will refresh his recollection if necessary.

THE COURT: What basis are you going --

MR. UMINA: I'm going to say, you know, you made some observations about Mr. Love 12 days prior to this. And his performance as a police officer, and him as a person, and his significant weaknesses. Twelve days prior were his communication skills, that he cannot comprehend, retain information well, including basic instructions and that he gets confused easily.

THE COURT: And you will have to tell me Mr. Parker's background.

MR. UMINA: When I deposed him, I believe he had been at the department for 12 years, so he has probably been there about 15 years now. And at the time the field training program was relatively new, but he was Mr. Love's assigned field training officer during this phase. And so that is who, you know, did his reviews. That's who he rode with. That's who was training him at the time.

04:20:53 1 THE COURT: So you don't intend to call Mr. Parker to  
04:20:58 2 (inaudible) credibility of Mr. Love, based on Mr. Parker's  
04:21:02 3 observations, again, contemporaneous -- almost  
04:21:07 4 contemporaneous, or close in time anyway, with this based on  
04:21:10 5 his observations or Mr. Love?

04:21:12 6 MR. UMINA: Mr. Love, yes, specifically as an officer  
04:21:16 7 and as a person.

04:21:17 8 THE COURT: All right. Anything further, Mr.  
04:21:20 9 Carroll?

04:21:20 10 MR. CARROLL: I reiterate what I said, and want to  
04:21:23 11 point out that Deputy Parker is not a psychologist. He does  
04:21:25 12 not have any training or a basis to make any opinions as to  
04:21:27 13 recall or his ability to understand (inaudible), Your Honor.  
04:21:30 14 I simply believe it's an employment record that can't be used  
04:21:33 15 to impeach.

04:21:35 16 THE COURT: I am inclined to sustain that objection.  
04:21:39 17 I am giving you a chance to find a case that says you can call  
04:21:43 18 a witness who (inaudible) credibility of a non-party witness.  
04:21:47 19 I certainly understand Mr. Love is a critical witness here.  
04:21:50 20 But I need something that tells me you can call an outside  
04:21:55 21 witness.

04:21:56 22 MR. UMINA: We will look into that tonight.

04:21:58 23 THE COURT: Let's do that. But given that, we are  
04:22:00 24 going to hold that in abeyance. I will give you that chance  
04:22:02 25 and we will decide that the very first thing in the morning.

04:22:12 1 So why don't we do this: You guys can get started on that. I  
04:22:16 2 will dismiss the jury for the day, and tomorrow we will start  
04:22:24 3 with Mr. Parker.

04:22:28 4 MR. UMINA: Yes. And if the Court -- if it pleases  
04:22:30 5 the Court, I mean, if you wish to go any further, we can call  
04:22:34 6 Rick Rhoades today. We don't anticipate him being that long  
04:22:36 7 of testimony. If you want to start tomorrow, that's fine.

04:22:38 8 THE COURT: With all due respect, it's not personal,  
04:22:44 9 why don't we do that, start him tomorrow. That will be the  
04:22:47 10 plan. I will give you another swing with respect to Officer  
04:22:51 11 Parker tomorrow. I understand your standing objection based  
04:22:54 12 on your proffer. I understand. Is there any other testimony  
04:22:58 13 from Officer Parker that you anticipate eliciting?

04:22:58 14 MR. UMINA: No, there is not other relevant testimony  
04:23:04 15 to this.

04:23:04 16 THE COURT: I understand. Mr. Carroll?

04:23:07 17 MR. CARROLL: No, Your Honor.

04:23:08 18 THE COURT: All right. We will break for the day.  
04:23:13 19 We will revisit this in the morning. We will start with Mr.  
04:23:20 20 Rhoades in the morning.

04:23:22 21 MS. DURST: The only thing I wanted to put on the  
04:23:25 22 record was, I don't want to have the situation that we had  
04:23:29 23 yesterday. I don't believe Deputy Parker -- when I talked to  
04:23:35 24 him at lunch, when he was here, he indicated he didn't have a  
04:23:38 25 subpoena for today, but we got him here. I don't think he is

04:23:42 1 under subpoena for tomorrow. I just want Mr. Umina to be able  
04:23:45 2 to let Deputy Parker know because he is also Judge Wilson's  
04:23:50 3 and Marion County's bailiff. So I don't want to have a  
04:23:54 4 situation where you make a ruling Deputy Parker is permitted  
04:23:57 5 to testify, and then he not be here. So I just wanted to  
04:24:00 6 bring that to the Court's attention because I don't believe he  
04:24:03 7 was under subpoena for tomorrow.

04:24:05 8 MR. UMINA: Your Honor, I believe that he was. I  
04:24:06 9 believe I put him and Forsyth under subpoena, but I had --  
04:24:10 10 actually Parker and I, we have good communication, so I  
04:24:13 11 will -- he told me he could be up here tomorrow. I will get  
04:24:17 12 his number, and we will do some research --

04:24:24 13 THE COURT: Okay. Does anyone have a problem with  
04:24:32 14 starting at nine tomorrow?

04:24:32 15 MR. UMINA: No.

04:24:33 16 MS. DURST: No.

04:24:34 17 THE COURT: I will ask the jury to start at nine and  
04:24:36 18 so we can get started on that. Please check with Officer  
04:24:41 19 Parker or Deputy Parker.

04:24:41 20 (Bench conference concluded, and the following  
04:24:41 21 transpired in open court.)

04:26:01 22 THE COURT: Ladies and gentlemen of the jury, we have  
04:26:01 23 actually reached a good spot in our witness lineup to break  
04:26:04 24 for the day, so we are going to do that. Before I get to my  
04:26:09 25 repeated instructions, let me pose this question: Our normal



04:26:14 1 schedule, or what we try to make a normal schedule during  
04:26:18 2 trial when we are receiving evidence, is to start at 9:00 a.m.  
04:26:21 3 Would that pose a problem if we started at 9:00 tomorrow  
04:26:26 4 morning?

04:26:27 5 JUROR: Well, I have to get my girl and take my  
04:26:30 6 little girl into school in the morning. About an hour and a  
04:26:33 7 half drive for me.

04:26:34 8 THE COURT: Does 9:30 work better?

04:26:37 9 JUROR: Yes.

04:26:37 10 THE COURT: Understood. I too make a morning school  
04:26:41 11 drop-off route, but I have a shorter commute. We will stick  
04:26:45 12 with 9:30 then, but we will be ready to hear from our next  
04:26:51 13 witness at 9:30 tomorrow morning.

04:26:52 14 Please continue to refrain from discussing the case with  
04:26:55 15 anyone, that includes amongst yourselves, with any fellow  
04:26:58 16 jurors. I am to be blamed if any of your family members, if  
04:27:04 17 they ask you what you have been doing all day. There will be  
04:27:05 18 a time when you can talk to them. It's just not yet. Also  
04:27:09 19 please continue to refrain from undertaking any independent  
04:27:14 20 investigation efforts, not only with respect to this case, in  
04:27:16 21 particular, the issues that have come up so far.

04:27:18 22 But with that, we thank you again for your time and  
04:27:21 23 attention today. We will see you at 9:30 in the morning with  
04:27:24 24 my promise that it will be temperate all day here tomorrow.  
04:27:29 25 Thank you all very much. Have a pleasant evening.

(Jury excused, and the following transpired in open court.)

THE COURT: Is there something else we need to take up? Anything we need to address at this point?

MR. UMINA: No, Your Honor.

MS. DURST: No, Your Honor. Thank you.

THE COURT: All right. Thank you all very much. I will see everybody here at 9:30. Thank you all very much.

(Proceedings concluded at 4:25 p.m.)

C E R T I F I C A T E

I, Jill M. Cutter, Registered Professional Reporter and Official Reporter for the United States District Court for the Northern District of West Virginia, so hereby certify that the foregoing is a correct transcript to the best of my ability of the taped proceedings in the above-styled action on April 7, 2021, as reported by me in stenotypy.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial conference of the United States.

Given under by hand this day, April 26, 2021.

/s/ Jill M. Cutter, RPR

Official Reporter, United States  
US District Court for the Northern  
US District of West Virginia

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